United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

77-7131

United States Court of Appeals

For the Second Circuit.

ATLANTIC & GREAT LAKES STEAMSHIP CORP.,
Plaintiff-Appellee,

against

STEELMET INC.,
Defendant,

and

TIDEWATER TERMINALS, INC.,
Defendant-Appellant.

UNITED STATES COURT OF APPEALS
FILED
MAY 16 1977
DANIEL FUSARO, CLERK
SECOND CIRCUIT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOINT APPENDIX.

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DONOVAN, DONOVAN, MALOOF & WALSH
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THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 732-6978—1977

(1570)

PAGINATION AS IN ORIGINAL COPY

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT.

ATLANTIC & GREAT LAKES STEAMSHIP CORP.,

Plaintiff-Appellee,

against

STEELMET INC.,

Defendant,

and

TIDEWATER TERMINALS, INC.,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

DOCKET ENTRIES.

DATE	PROCEEDINGS	
ec.23-74	Filed complaint and issued summons.	
1-20-75	Filed stip. and order ext. defendants' time to answer to 1-30-75 -- Metzner, J.	
-30-75	Filed ANSWER of defendants	TP&
1-30-75	Filed defendants' first set of interrog. and request for production	
2-06-75	Filed summons and Marshals return - served Steelmet Inc. by Sid Berman on 12-27-75 Tidewater Terminals, Inc. by Cid Berman on 1-27-75	
2-09-75	Filed pltfs answers to interrog.	
2-17-75	Filed defendants supplemental interrog.	
2-17-75	Filed defendants notice of oral deposition of pltf. by Kevin J. Kerwin on 12-30-75 and defts 2nd request to produce.	
2-30-75	Filed pltfs notice to take depositions of defendants on 1-21-76 and request for production of documents.	
2-19-75	PRE-TRIAL CONFERENCE HELD - Metzner, J.	
01-19-76	Filed pltf's answers to supplemental interrog.	
1-23-76	Filed defts notice to take depositions of Lloyds Register of Shipping on 1-30-76 and request to produce. -- subp. issued.	
1-28-76	Filed defts notice to take depositions of Lloyds Register of Shipping on 1-30-76.	
3-01-76	Filed defts notice of deposition upon written questions to Javier A. Zegarra Zavaleta, vefore US Counsel in Lima, Peru.	
5-28-76	Filed depositions of Javier A. Zagarra Zavaleta before Am. Counsel in Lima, Peru. m/n	
-28-76	Filed defts. affdt. and notice of motion for an order precluding pltf. from introducing at trial any evidence pertaining to pltfs. alleged damages,etc, ret .on: June 7,1976 at 10am in Rm.2201.	
06-08-76	Filed pltfs answers to suppl. interrog.	
06-11-76	Filed consent pre-trial order. -- Metzner, J.	
06-18-76	Filed pltfs answers to suppl. interrog.	
07-14-76	Filed memo endorsed on defts motion filed on 5-28-76: The motion is marked withdrawn as per letter of 7-2-76 and attached hereto. So ordered. - Metzner, J.	
07-14-76	NON JURY TRIAL BEGUN before Metzner, J. and concluded. Decision reserved.	
07-19-76	Filed deft's post trial memorandum of law.	
07-19-76	Filed pltfs post trial memorandum on behalf of plaintiff.	
6-14-76	P.T.C. held - Thos. Reby	
2-23-77	Filed plaintiff's proposed findings of fact.	
2-23-77	Filed defts proposed findings of fact and conclusions of law.	
02-23-77	Filed OPINION #45626...There is no basis for proceeding against Steelmet. Plaintiff is entitled to recovery of $62,746.55 against deft. Tidewater plus 7%interest from 12-15-74. -- Metzner, J. m/n	

(2)

DOCKET ENTRIES

02-25-77	Filed judgment #77,308 that pltf. recover of deft. Tidewater Terminals, Inc. the sum of $62,746.55. Ordered that the complaint is dismissed as to deft. Steelmet, Inc. - Clerk. m/n
02-28-77	Filed amended judgment # 77,322 that pltf. recover of deft. Tidewater the total amount of $ 72,347.58. Ordered that pltf. have execution thereof. - Metzner, J. Judgment entered - Clerk m/n
03-02-77	Filed Bill of Costs on Judgment #77,322 taxed in the sum of $296.31 in favor of plaintiff against deft. Tidewater only and added to the judgment. - Clerk.
03-09-77	Filed deft. Tidewater Terminals Inc.'s notice of appeal to the USCA for the 2nd Circuit from Judgment of 02-28-77 m/copies
03-11-77	Filed appellant's affdvt. of service of Supersedeas Bond
Mar 9-77	Filed SUPERSEDEAS bond in total sum of $80,556.00 (Ins. Co. of No. America)
3-11-77	Filed copies of docket entries and notice of appeal
3-18-77	Received docket fee
3-18-77	Donald F. Mooney, Esq. filed form C, p/s
3-18-77	Donald F. Mooney, Esq. filed form D, p/s
3-21-77	Court reporter filed form D
3-22-77	Filed scheduling order #1 (CAMP) PC
3-23-77	Filed record (original papers of district court)
4-11-77	Filed stipulation substituting Donald F. Mooney as attorney for appellant in place of Thacher Proffit & Wood
4-18-77	Filed order granting leave to counsel for appellant to remove original record to be returned not later than the date of filing of the appellant's brief and appendix
4-19-77	Filed supplemental record (Original papers of district court)
4-21-77	Filed supplemental record (original papers of district court) (Second supplement)

Complaint.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

ATLANTIC & GREAT LAKES STEAMSHIP CORP.,

Plaintiff,

against

STEELMET INC., and TIDEWATER TERMINALS, INC.,

Defendants.

Plaintiff, by its attorneys, Donovan, Donovan, Maloof & Walsh alleges upon information and belief as follows:

AS AND FOR A FIRST CAUSE OF ACTION

FIRST: All and singular the following premises are true and constitute an admiralty or maritime claim within the meaning of Rule 9 (h) of the Federal Rules of Civil Procedure and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

SECOND: At and during all the times hereinafter mentioned, plaintiff was and now is a corporation duly organized and existing under the laws of the State of New York with an office and place of business at 76 Beaver Street, New York, New York and at all time mentioned hereto was and is the disponent owner of the vessel, M. V. Mary.

THIRD: At and during all the times hereinafter mentioned, the defendant, Steelmet Inc., was and is a corporation organized and existing under the laws of one of the States of the United States with an office and place of business at 919 3rd Avenue, New York, New York.

FOURTH: At and during all the times hereinafter mentioned the defendant Tidewater Terminals Inc., was and

now is a corporation organized and existing under the laws of one of the States of the United States with an office and place of business at New York, New York c/o Steelmet Inc.

FIFTH: On or about November 21, 1974, the defendants entered into a charter party agreement on the "Genjapscrap" form with the plaintiff wherein the said defendants agreed to voyage charter plaintiff's vessel M/V Mary for one voyage from Jacksonville, Florida to Chimbote, Peru and said defendant agreed to load on board the aforementioned vessel 9,375 long tons of shredded scrap and to pay plaintiff $29.25 per long ton. Pursuant to this agreement, plaintiff agreed to load the vessel between November 27 and December 9 and to pay said freights.

SIXTH: The contract as agreed to between the parties provides that the vessel was subject to the approval of the receivers. Defendants willfully and fraudulently failed and neglected to contact the receivers for approval, which approval would have been given by the receivers had they been consulted. On the contrary, defendants falsely stated that the receiver had not approved the vessel and refused and failed to perform the contract.

SEVENTH: Plaintiff was at all times ready, willing and able to perform its obligations under the contract and but for defendants' unlawful and tortious breach of their obligation, would have performed the contract.

EIGHTH: By reason of the defendants' actions, the plaintiff was damaged in the amount of $100,000.00 as near as can be estimated, no part of which has been paid.

AND AS FOR A SECOND CAUSE OF ACTION

NINTH: Plaintiff repeats and realleges each and every allegation contained in Paragraphs First to Seventh inclusive as though the same were set forth herein at length.

TENTH: The defendants falsely and fraudulently stated and represented to the plaintiff that they would charter the M/V Mary for the aforementioned voyage.

ELEVENTH: The said representations were false and defendants never intended to perform the contract.

TWELFTH: Such representations were made by said defendants as of their own knowledge and were known to be false when made or were made by said defendant recklessly and without any knowledge that the same were true and careless of whether the same were true or false.

THIRTEENTH: Such representations were made by said defendant with intent to deceive and defraud the plaintiff and to induce the plaintiff to act in accordance with the representations, and to charter the said vessel.

FOURTEENTH: Plaintiff, at the time said representations were made did not know of the truth but believed said representations to be true and was thereby induced to change its position upon reliance of those representations.

FIFTEENTH: As a direct and consequential result occasioned by defendants' misrepresentation, plaintiff was unable to obtain gainful employment for its vessel and as a direct result of defendants' misrepresentations has been damaged in the sum of $100,000.00, no part of which has been paid.

WHEREFORE, plaintiff prays:

1. That process in due form of law may issue against defendant citing it to appear and answer all and singular the matters aforesaid;

2. That judgment may be entered in favor of plaintiff against defendant for the amount of $100,000.00, together with interest and costs and the disbursements of this action;

3. That if defendant, Tidewater Terminals, Inc. cannot be found within this district, that all of its property within this district including bank accounts or other property be attached in the sum of $100,000.00 with interest and on their costs.

4. That this Court will grant to plaintiff such other and further relief as may be just and proper.

DONOVAN, DONOVAN, MALOOF & WALSH
Attorneys for Plaintiff
By: Richard E. Repetto
161 William Street
New York, New York 10038

State of New York,
County of New York, ss:

KEVIN J. KERWIN, being duly sworn, deposes and says:

That he is Operations Manager of Atlantic & Great Lakes Steamship Corp., the plaintiff herein. That he has read the foregoing complaint and knows the contents thereof and that the same is true of his own knowledge except as to those matters therein stated to be alleged upon information and belief, and as to those matters he believes them to be true.

The reason this verification is made by deponent and not by the plaintiff is that the plaintiff is a corporation and deponent is an officer thereof.

KEVIN J. KERWIN

Sworn to before me this
23rd day of December, 1974.
RICHARD E. REPETTO
Notary Public, State of New York
No. 30-3254775
Qualified in Nassau County
Cert. filed in New York County
Commission Expires March 30, 1975

Exhibit D, Annexed to Interrogatories, Dated December 9, 1975.

(See opposite page.) ☞

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Friday

New York, New York March 29 1974

It is this Day Mutually Agreed, BETWEEN ATLANTIC AND GREAT LAKES STEAMSHIP CORPORATION, As

nt Owners of the ~~Steamship or Motorship~~ VESSELS TO BE NAMED (See Clause #47)

~~of~~ ~~Built~~ ~~at~~ ~~of~~ ~~Tons Net Register~~, Classed 100 A1 Lloyd's Register or equivalent

~~at~~ , now trading

and THE CELOTEX CORPORATION of Tampa, Florida , Charterers.

1. That the said Steamship being tight, staunch and strong, and in every way fitted for the voyage, with liberty to take outward cargo for Owner's benefit, shall with all convenient speed sail and proceed to one (1) safe berth HALIFAX, N.S.

or so near thereto as she may safely get and lie always safely afloat, and there load a BULK GYPSUM per Cl.48 cargo of

not exceeding what she can reasonably stow and carry over and above her cabin, tackle, apparel, provisions, fuel and furniture; which the Charterers bind themselves to ship, and being so loaded the Steamer shall proceed to one (1) safe berth EDGEWATER, NEW JERSEY, where there is about 31' brackish water available at the proper tide, but where the vessel is to lie safely aground in soft mud

~~or so near thereunto as she may safely get~~, and there, ~~always safely afloat~~, deliver the cargo as customary, at such wharves, docks or other safe places as Charterers or their Agents may direct on arrival, in accordance with Bills of Lading, in consideration whereof Charterers shall pay the Vessel freight as follows: $5.50 per long ton F10 about trimmed. 100% prepaid on signing and releasing Bills of Lading basis Bill of Lading weight. All freight is considered earned as cargo is loaded and is to be non-returnable, ship and/or cargo lost or not lost.

2. It is also mutually agreed that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the seas or other waters, by fire from any cause or wheresoever occurring, by barratry of the Master or crew, by enemies, pirates or robbers, by arrest and restraint of Princes, Rulers or People, by explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenances, by collisions, stranding or other accidents of navigation of whatsoever kind (even when occasioned by negligence, default or error in judgment of the pilot, Master, mariners or other servants of the Ship Owner, not resulting, however, in any case from want of due diligence by the Owners of the Ship or any of them, or by the Ship's Husband or Manager). Charterers also not liable for loss or damage occurring by restraint of Princes, Rulers or People.

3. GENERAL AVERAGE shall be payable according to York/Antwerp Rules 1950 in New York Average Bond with values declared therein to be signed, also sufficient security to be given as required by Master or Agents.

4. The Steamer has liberty to call at any port in any order, to sail without pilots, to tow and assist vessels in all situations, and to deviate for the purpose of saving life and property. Should the Vessel put into a port of distress, or be under Average, she is to be consigned to Owners or their Agent or Agents, paying him or them usual charges and commissions, and in case a General Average statement be required, the same is to be adjusted at New York by adjusters to be appointed by the Owners who are to attend to the settlement and collection of the Average, subject to customary charges.

5. The Freight is in full of all port charges, towages, ~~trimming,~~ pilotages and consulages, etc., ordinarily paid by the Steamer. Customs overtime for Owner's account. Ship's clerk if required at loading or discharging port is for Owner's account.

ach 6 Cargo to be loaded ~~at the average rate of hours, Sundays and Holidays always excepted~~ per Clause #50 ~~per weather working day of 24 consecutive~~

At ~~each~~ port of loading, time to commence at 8 A.M. on the ~~working~~ day ~~(Sundays and Holidays excepted)~~ following day Master has tendered Vessel's notice of readiness in writing to load to the Charterers or their Agents, in business hours of 9 A.M. to 5 P.M. Monday through Friday and 9 A.M. to 12 Noon Saturday, holidays excepted.

per Clause #50

7. Cargo to be receiv[illegible]y merchants at the [illegible] risk and expense alongside the Steamer or as customary, and to be discharged ~~at the average rate of~~ [illegible] ~~per weather working day of 24 consecutive hours, Sundays and Holidays always excepted.~~

At ~~each~~ port of discha[illegible] time for discharging to commence at 8 A.M. [illegible] ~~working~~ day ~~(Sundays and Holidays excepted)~~ following day Master has tendered Vessel's notice of readiness ~~in writing~~ to discharge to the Charterers or their Agents, in business hours of 9 A.M. to 5 P.M. Monday through Friday and 9 A.M. to 12 Noon Saturday, holidays excepted.

8. It is understood that at ports of loading and discharging Master is not to tender vessel until hatches are open and vessel is in all respects ready to load or discharge.

9. Steamer to load and discharge at ~~such~~ wharves, docks or places as designated by the Charterers or their Agents.

10. Cargo shall be loaded, ~~stowed~~ trimmed and discharged at the risk and expense of Charterer by stevedores nominated, employed and paid by Charterer. Shore winchmen at loading and discharging ports to be for account of Charterers. Cargo shall be stowed under the supervision and to the satisfaction of the Master; Charterer, Charterers' Stevedores and Charterers' Agents shall not be responsible for stowage, or any consequences arising th[illegible] Charterers

11. ~~Owners~~ are to pay wharfage and/or dockage charges on ship at loading and discharging ports.

12. Cost of weighing cargo at discharging port or ports to be for account of Charterers and/or their Agents.

13. Any dunnage, excepting shifting boards, required is to be provided by Charterers and at Charterers' expense, but Charterers to have use of such dunnage as on board ship, free of charge.

14. At loading and discharging ports, ship is to furnish steam or power to drive ship's winches, also to give Charterers' stevedores the full use of vessel's winches, derricks, gins, blocks and falls.

15. Charterers have the privilege of working at each loading and discharging port at night, Sundays, Holidays, Half Holidays, Saturday after Noon and on notice days, such time ~~not~~ counting as laytime, ship furnishing lighting as aboard, vessel and Owner paying all overtime charges, except for stevedores which is for account of Charterers. ~~From 12:00 o'clock noon on Saturday to 8:00 A.M. Monday not to count as laytime, even though vessel is worked, unless vessel is already on demurrage.~~ Time used on notice days or before laytime commences in accordance with Clauses 6 and 7 not to count as laytime.

16. ~~Freight tax and any other tax on ocean freight revenue for Owners' account.~~

17. Lighterage (if any) to be at risk and expense of cargo.

18. Demurrage, if any, to be paid by Charterers at the rate of $5,500.00 per day of 24 continuous running hours or pro rata for part of a day at both loading and discharging ports for all time used in excess of allowed laytime. (See Clause 49-C.

19. Owners to pay Charterers despatch money at the rate of $2,750.00 per day of 24 continuous running hours or pro rata for part of a day for all time saved at both loading and discharging ports. Despatch earned to be deducted at time of final freight settlement.

20. Charterers to have the right to average the days allowed for loading and discharging. (Laytime is reversible)

21. Claims, if any, for damage to vessel resulting from stevedore operation under this charter are to be settled directly between Vessel Owners and stevedores.

22. All liability of Charterers shall cease on completion of loading and payment of advance, if any, Owner having lien on Cargo for freight, dead freight, and demurrage.

23. If the cargo cannot be delivered, loaded or discharged by reason of a strike or lockout of any class of workmen or stoppage of labour or lighters, or anything beyond the control of the Charterers and/or their Agents essential to the delivery, loading or discharging of the cargo, the days for loading and discharging shall not count as laytime or demurrage during the continuance of such strike, stoppage or lockout. If, at any time, Charterers and/or their Agents are unable to provide cargoes because of war, revolution, civil commotion, strike, riot, earthquake, failure of supply, or any other event or cause beyond the control of the Charterers and/or their Agents, performance hereunder shall be cancelled without liability on the part of either party.

24. ~~Laydays for loading not to commence before~~ [illegible] ~~except with the consent of the Charterers or their Agents, and if the vessel is not ready to load by~~ [illegible] ~~Charterers shall have the option of canceling or maintaining this Charter, their decision to be given at once if the Vessel be then at loading port but if the Vessel has not then arrived, their decision need not be given until 24 hours after arrival.~~

25. At loading port Steamer to employ Owners' ~~as~~ Agents, Steamer paying current agency fee. At discharge port Steamer to employ Owners' ~~as~~ Agents, Steamer paying current agency fee.

26. Should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men.

27. Vessel has the liberty of bunkering before and/or after loading and either port but Vessel to remain responsible for any consequences arising from same.

28. Any cleaning of Vessel's holds required of Charterers at discharging port to be interpreted as shovel cleaning only.

29. Bill of lading issued for cargo loaded should show:
"Subject to all the terms, provisions and exceptions of Charter Party dated at New York, March 29, 1974."

30. Extra insurance, if any, charged on cargo by reason of Vessel's age, size, nationality, classification or ownership to be for Owners' account.

31. No cargo to be stowed in bridge spaces, deep tanks or other spaces inaccessible to mechanical grabs for loading or discharging. No cargo is to be stowed in the 'tweendecks unless required by the Master for seaworthiness and safety of the vessel and to enable the vessel to lift a full cargo; in this case only a minimum quantity of cargo is to be loaded in the 'tweendecks, and any extra expenses incurred in loading or discharging by reason of stowage in 'tweendecks, or other excepted places, to be for account of the vessel; any time so lost over and above the usual time required for grab loading and discharging is not to count as laytime.

32. At port of loading, Master to tender notice of readiness and apply for cargo to National Gypsum Company.
At port of discharge, Master to tender notice of readiness to Celotex, Edgewater, New Jersey.

33. Penalty for non-performance of this Charter Party proved damages, not exceeding estimated amount of freight.

34. ~~Charterers' option to use two berths if necessary in loading or discharging. All time used shifting to count as laytime. Charterers to pay only port shifting expenses of towage, pilotage and line running. Owners to pay all other shifting expenses.~~

35. U.S.A. Clause Paramount, New Both to Blame Collision Clause, New Jason Clause and Chamber of Shipping War Risk Clauses 1 and 2 to be incorporated in this Charter Party.

36. Commission of 4½ Per Cent, upon the gross amount of Freight, Deadfreight and Demurrage is due to M.I.D.-SHIP MARINE, INC. by the Vessel and Owners, upon shipment of cargo, Steamer and/or cargo lost or not lost.

Clauses 37 thru 51 all inclusive, as attached, to be considered fully incorporated herein.

Cables:
"GUNCHO, NEWYORK"
M.I.D.-SHIP MARINE, INC.
17 Battery Place
N.Y., N.Y. 10004
Tel: 212-952-1600

IN WITNESS WHEREOF the parties hereto have executed this agreement, ~~in triplicate,~~ as of the day and year first above written.

Witness the signature of: _____

By: _____

Witness the signature of: _____

By: _____

Printed by John McGuirk Co., New York

RIDER TO VESSELS TO BE NAMED - CHARTER PARTY DATED MARCH 29, 1974

37. Vessel to be suitably cleaned prior to tendering Notice of Readiness at loading port to load Bulk Gypsum.

38. Any taxes on vessel to be for vessel's account and any taxes on cargo to be for Charterers' account.

39. P & I Bunkering Clause, as attached.

40. If vessel calls at any U.S. port for purposes of loading or discharging cargo and/or embarking passengers, vessel's cargo gear and all other equipment must comply with regulations established by U.S. Public Law 84-742, Part 9 (Safety & Health Regulations for Longshoring). If longshoremen are not permitted to work due to failure of the Master and/or Owners and/or Owners' Agents to comply with the aforementioned Regulations, any delay resulting therefrom shall be for Owners' account.

41. Hatch Protection Clause: The Captain shall cover the hatch of each hold as soon as the loading into same has finished and also all hatches when the loading or discharging has finished for the day if the weather be wet or threatening; he shall also during the rain and snow, cover up all hatches by which loading or discharging is not actually going on.

42. Trade Restriction: Owners warrant that the vessel has not called at Cuba, Communist China, Communist North Viet Nam, North Korea or any other country that would prohibit her from loading and/or discharging cargo in the United States.

43. Pollution Clause: Owners warrant that the vessel has on board a valid certificate for financial responsibility in compliance with the U.S. Water Pollution Regulations.

44. Cargo Battens: Cargo battens are to be removed prior to loading.

45. Owners to give 10 and 7 days and 48 and 24 hours notice of ETA Halifax. At discharge port, Owners to give notice on sailing from load port and 24 hours notice of arrival.

46. Borrowed Servant: The Pilot, Master, Officer and Crew of the vessel and any tug boat, person or facility assisting the vessel shallnot be agents or employees of the Charterers and the Charterers shall not be liable for any loss, damage or claim resulting from or arising out of negligence or error of any of them while the vessel is proceeding to or from or lying at any place of loading or discharging.

47. Description of the Vessels:

Performing vessels to be geared or gearless, single deck, engines aft bulkcarriers or ore carriers with the clear understanding that no ship will be nominated that has smaller than normal hatches that will make it difficult for the discharging operation.

48. Cargo: Bulk Gypsum - 100,000 long tons, 10% more or less at Owners' option to be moved on vessels between 14 and 20,000 ton capacity between May 1, 1974 and December 15, 1974. Charterers' option declarable on or before May 31st to increase this contract by the addition of 60,000 long tons, 10% more or less at Owners' option.

49. Scheduling:

A. Charterers to keep Owners informed of their requirements and Owners are to provide vessels in timely fashion so that the Charterers do not run out of Gypsum at Edgewater.

B. The Owners are to give Charterers a minimum of 10 days notice of name of the performing vessel and ETA Halifax for each voyage.

C. Owners' option to perform consecutive voyages but if they do not do so then it is their responsibility to see to it that the vessels do not overlap as demurrage will not be applicable if the Owners place vessel in the loading or discharging ports while the previous vessel is still there. If, due to no fault of the Owners, vessels do happen to be at the Port(s) at the same time, then it is understood that time will commence to count on the second ship upon berthing.

50. Time Allowed: (See Clauses 6 and 7)

A. On vessels lifting between 14,000 up to 17,500 long tons, a total of 4 weather working days Sundays and holidays included to be allowed.

B. On vessel lifting from 17,501 long tons up to 20,000 long tons, a total of 5 weather working days Sundays and holidays included to be allowed.

51. All the terms, conditions and exceptions contained in this Charter Party shall apply to each voyage as if covered by a separate Charter Party.

Exhibit A, Annexed to Supplemental Interrogatories, Dated January 16, 1976.

(See opposite page.) ☞

Befrachtung
2 Hamburg 13
Feldbrunnenstraße 43
Telegr.: FLEETSHIP HAMBURG
Telefon: 44 18 61 · Telex: 0715597

Charter Party

LONDON EC3A 5DS

Hamburg, 12th July, 1974

New York, timechartered

C. (Ore) 7.

MEDITERRANEAN
but safe aground
IRON ORE

1. IT IS THIS DAY MUTUALLY AGREED BETWEEN ATLANTIC & GREATLAKES STEAMSHIP CORPORATION, owners of the good ~~[illegible]~~ vessel called the see clause 39 of ~~[illegible]~~ tons net register, now trading and expected ready to load about ~~[illegible]~~ the see clause 39 and KLOCKNER-WERKE AG HUTTE BREMEN, BREMEN charterers.

2. That the said Ship being warranted tight, staunch, and strong, and in every way fitted for the voyage, shall after delivery of her outward cargo proceed with all convenient speed to 1/2 safe berths ANGRA DOS REIS, 29'6" salt water draft guaranteed ~~[illegible]~~ and there load (always afloat) in the customary manner, free of turn, when, where and as soon as offered by Shippers agents a full and complete Cargo of Iron Ore ~~[illegible]~~ not exceeding what she can reasonably stow and carry over and above her Tackle, Apparel, Provisions and Furniture, and being so loaded, shall with all convenient speed proceed to one safe berth, one safe port RIVER WESER at Charterers' option BREMEN ~~[illegible]~~ and there deliver the same as customary, when where, and as ROGW may be required by Consignees, to whom written notice is to be given during office hours, 9 a. m. to 5 p. m. or Saturdays 9 a. m. to ~~[illegible]~~ of the Vessel being ready to discharge. Ship ~~[illegible]~~

see clause 39

to employ Charterers stevedores free of expense to the vessel

3. Freight to be paid at and after the rate of US$ 17.50 (Seventeen Dollars, fifty cents) per ton of 1016 kilograms ~~[illegible]~~ delivered, in full of all port charges, pilotages, consulages, light dues, ~~[illegible]~~ lightenage, and all other dues usually paid by Steamers, ~~[illegible]~~ FLOTSPOUT TRIMMED.

and to be discharged in two running days of 24 consecutive hours weather permitting Shinc

4. Sufficient Cash (if required) for Ship's ordinary disbursement to be advanced at Port of Loading, at the current exchange, by Shippers against the receipt of the Master on Bills of Lading, less Three per cent to cover commission, interest, and insurance, and the remainder of the freight to be paid on sight and true delivery of the Cargo, in Cash.

5. The Cargo to be shipped at the rate of 3,000 tons ~~[illegible]~~ per clear working day of 24 consecutive hours (weather permitting, Sundays and Holidays always excepted). Time lost by reason of all or any of the following causes shall not be computed in the loading or discharging time, viz. War, Rebellion, Tumults, Civil Commotions, Insurrections, Political Disturbances, Epidemics, Quarantine, Riots, Strikes, Lockouts, stoppage of Miners, Workmen, Lightermen, Tugboatmen, or other hands essential to the Working, Carriage, Delivery, Shipment or Discharge of the said Cargo whether partial or general, or Accidents at the Mines, at Receiver's Works or Wharf, Landslips Floods, Frost or Snow, Bad Weather, Intervention of Sanitary, Customs, and/or other constituted Authorities, Partial or Total Stoppage on Rivers, Canals or on Railways, or any other cause beyond control of Charterers, unless steamer is already on demurrage.

interruption of river and/or canal navigation

6. Time for loading to count from 6 a. m. after the Ship is reported and ready, and in free pratique, whether in berth or not, and for discharging from 6 a. m. after Ship is reported and in every respect ready, and in free pratique, whether in berth or not. Steamer to be reported during official hours only. In case Shippers can arrange to load ~~[illegible]~~ on Sundays or Holidays ROGW before time Commenced to count, Captain to allow work to be done, half such time used to count. Time between ~~[illegible]~~ Saturday and ~~[illegible]~~ a. m. Monday not to count, unless used in which case half such time actually used to count. ~~[illegible]~~ or any following day ~~[illegible]~~ or any following & holiday

respectively to load or discharge

At loading port

overtime in loading and discharging always to be for Owners account

7. ~~[illegible]~~ The Ship to work ~~[illegible]~~ if requested to do so, all extra expenses incurred thereby being paid by the ~~[illegible]~~ party ordering same. Officers' and crews' overtime always to be for Owners account

8. Demurrage (if any), at the rate of ~~[illegible]~~ US$ 4,500.-- ~~[illegible]~~ per running day ~~[illegible]~~ or pro rata for part of a day ~~[illegible]~~

9. ~~[illegible]~~

10. If any wilful misrepresentation be made in respect of the size position, &c., or should the steamer not be in Loading Port and ready to load see clause 39 it shall be at the option of the Charterer whether or not they will load the vessel. Captain to telegraph from the last port of discharge to ~~[illegible]~~ see clause 33

11. The Captain to sign Bills of Lading at any Freight required by Charterers, not less than chartered rate. ~~[illegible]~~

12. The Steamer is to be addressed for the Custom House business to Charterers or their agents at Ports of Loading and Discharging on usual terms ~~[illegible]~~ All Brokerages and Charges may be deducted from the Freight. Agents at discharging port will be nominated

13. Any averages occuring under this Charter to be settled according to York-Antwerp Rules, 1950. in London

14. Master to telegraph "Charterers", as well as Charterer's agents at Port of Loading, should he have to put in at any Port or Ports.

15. In case of Jettison, the Captain to report the same to Consignees immediately on arrival. spout trimmed free of expense to the vessel

16. ~~[illegible]~~

17. Shippers to put the mineral on board ~~[illegible]~~

18. A commission of 1.25 per cent on the gross amount of freight, dead freight, and demurrage is due to Fieser & v. Doornum, Hamburg and 1.25% to John Kilgour & Co., Ltd., London on delivery of cargo.

19. Ship to apply to Bela Vista Mineracao e Comercio Ltda., Rua Rodrigo Silva 18, Sala 503, Rio de Janeiro for Cargo and wire them on leaving last Port of Discharge if there are telegraphic facilities, failing which, Shippers to be allowed one day extra for loading. cables: 'TRADEFER RIO DE JANEIRO'

20. The Act of God, the King's enemies, Arrest and/or Restraints of Rulers, Princes and People, Quarantine, Fire on Board, in Hulk or Craft or on Shore, Ice, Barratry of the Master and Crew, Enemies, Pirates, Robbers by land or sea, accidents to and damage and detention from Boilers, and of Machinery, Collisions, Stranding, and of Machinery, Collisions, Stranding, and of Machinery, Jettison, or from any act, neglect, default or error in judgment whatsoever of the Pilot, Master, Crew or other servants of the Shipowners in the management and/or the navigation of the Steamer and all and every other Dangers and Accidents of the Seas, Rivers and Canals of whatever nature and kind whatsoever, before and during the said voyage always excepted. Steamer has liberty to call at any port or ports, in any order, or places, to bunker, ~~[illegible]~~ or to deviate for the purpose of saving life or property, with leave to sail without Pilots, and tow or to be towed and assist vessels or to be assisted in all situations whatsoever. Salvage and/or towage for Owners' sole benefit. Ship not answerable for losses through explosion, bursting of boilers, breakage of shafts, or any latent defect in the machinery or Hull, not resulting from want of due diligence by the Owners of the Ship or any of them or by the Ships Husband or Manager.

21. All liability of Charterer shall cease on completion of loading and payment of advance, if any. Owner having lien on Cargo for freight, dead freight and demurrage.

22. ~~[illegible]~~

23. The Captain shall cover the hatch of each hold as soon as the loading into steamer has finished, and also all hatches when the loading or discharging has finished for the day. If the weather be wet or threatening he shall also, during rain and snow, cover up all hatches by which loading or discharging is not actually going on. It is agreed that the Captain may send someone to check the weight of the cargo on delivery so as to avoid dispute, and weight as ascertained to be conclusive.

24. Owners accept the risk of detention which may arise if by reason of insufficient depth of water the steamer cannot get to a vessel lying on and/or discharging berth, as mentioned, when same available.

25. Any time lost at discharging port owing to scarcity of wagons and/or labour to be computed as laydays.

26. If through congestion at the Port of Discharge steamer is kept waiting off the port laydays are to commence to count as per Clause 6, but not until 24 hours from arrival (Sundays and holidays excepted).

27. In the event of any general strike, riot, insurrection, revolution or war, which may prevent the shipment of lime ore under this Charter, the Owners in the event of no cargo having been loaded, have the option of cancelling this Charter, or if any cargo has been loaded they have the right to proceed on the voyage with the cargo so loaded. In the latter case the time to count as laydays to be mutually agreed between Owners and Charterers.

Clauses 28 to 39, as attached, shall be deemed fully incorporated in this Charter Party.

NOTICE

SERIOUS LOSSES have recently been caused to Charterers by Captains signing Bills of Lading for a greater quantity than they knew to have been loaded.
OWNERS ARE REQUESTED to assist Charterers by warning the Captain not to sign Bills of Lading for one ton more than Captain believes to be on board his Steamer.
THE CAPTAIN should carefully calculate from ship's displacement the weight of cargo, and make sufficient allowance for weight of bunker coal, stores, &c.
OWNERS ARE PAID freight on output weight, and where Captains sign for a greater quantity, does paid by the Steamer on such excess are not recoverable.
A true copy of original Charter to ~~[illegible]~~

Agents at Angra dos Reis:
Arens-Langen Comercio Representacoes Ltda.,
Rua Mexico 41, 4th floor,
Rio de Janeiro
cables: 'ARLANG RIO DE JANEIRO'

For and on behalf of Charterers as per authority
FIESER & V. DOORNUM

ATLANTIC AND GREAT LAKES STEAMSHIP CORPORATION

RIDER TO 'ATLANTIC AND GREAT LAKES TBN' CHARTER PARTY DATED 12TH JULY, 1974, ANGRA DOS REIS/ONE SAFE PORT RIVER WESER CHARTERERS' OPTION EMDEN

---

28. 90% of freight to be payable in cash within 7 days of signing bills of lading, balance after right and true delivery of the cargo. Charterers to have the option to pay the freight on the bill of lading weight less one per cent in lieu of weighing. This option to be declared before breaking bulk. Freight to be paid to Owners' account No. 0-75901 with Manufacturers Hanover Trust Co., 40 Wall Street, New York, N.Y. 10015.
Attention ~~XXXXXXXXXXXXXXXXXXXX~~ Miss June Klein

29. At Angra Dos Reis Port Utilization Tax to be for Owners' account, but Merchant Marine Renewal Tax and all other taxes on cargo to be for Charterers' account.

30. Owners to employ Charterers' Agents and Stevedores at loading and discharging port.

31. Owners to pay despatch money at half the demurrage rate on working time saved at loading and discharging port.

32. Vessel to be guaranteed suitable for grab discharge and no cargo to be loaded in tweendecks, deeptanks or bunkers or other places inaccessible to grabs. Any time lost and any extra trimming etc. incurred by cargo not accessible to grabs to be for Owners' account. Deeptanks, tunnels and all other provisions within vessel's holds to be sheltered against damages by Receivers' grab discharging, failing which Owners to be responsible for any consequences. Stevedores damages, if any, to be settled directly between Owners and Stevedores.

33. Master to cable to "TRADEFER RIO DE JANEIRO" and to "ARLANG RIO DE JANEIRO" vessel's ETA 10 days, 7 days and 48 hours prior to vessel's expected arrival, stating quantity of cargo required.
The 10 days notice also to be given to "KLOECKNEREINKAUF BREMEN" and to "FISSERSHIP HAMBURG".
On sailing from last discharging port Master to cable to "TRADEFER RIO DE JANEIRO" to "ARLANG RIO DE JANEIRO" to "KLOECKNEREINKAUF BREMEN" and to "FISSERSHIP HAMBURG", stating ETA Angra Dos Reis.

34. On sailing from loading port Master to cable to "KLOECKNEREINKAUF BREMEN" and to "FISSERSHIP HAMBURG", stating ETA discharging port, quantity loaded for each grade of ore and quantities loaded in each hold/hatch as well as vessel's arrival draft at discharging port in freshwater. Furthermore, Master to cable 48 hours notice before estimated arrival at discharging port to Agents at discharging port stating ETA discharging port and maximum draft on arrival in freshwater.

35. If Charterers exercise the option to load vessel at two berths, shifting expense to be for Charterers' account and shifting time to count as loading time.

36. Any extra insurance on account of vessel's age, class, flag and nationality to be for Owners account.

37. Quay weight and tonnage dues at discharging port equivalent to about DM 0.15 per ton of 1000 kilos to be for Owner's account.

38. Centrocon Arbitration Clause, Both-to-Blame Collision Clause, General Average Clause, New Jason Clause and War Risk Clauses 1 and 2 to form part of this Charter Party.

39. This Charter Party covers two cargoes as follows:
Atlantic Great Lakes tonnage tbn
each 15/17.000 tons iron ore 10 pct. moloo, 1st cargo laycan 25 August/15 September 1974 to be narrowed to 15 days' spread on August 5, 1974.

2nd cargo 45/75 days later - laydays to be stated by owners with 15 days' spread on September 20, 1974.

Owners option to put in geared or gearless single decker/bulk carrier or ore-carrier.

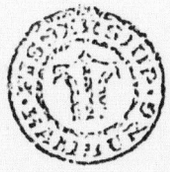

Exhibit B, Annexed to Supplemental Interrogatories, Dated January 16, 1976.

(See opposite page.) ☞

English Translation of Deposition of Javier A. Zegarra Zavaleta.

Republic of Peru,
Province and City of Lima, ss:
Embassy of the United States of America,

Deposition of witness, taken before me, Leon M. Johnson, Jr., Consul of the United States of America at Lima, Peru, under and by virtue of a commission in a certain cause pending in the United States District Court Southern District of New York at issue between Atlantic & Great Lakes Steamship Corp., Plaintiff and Steelmet, Inc., and Tidewater Terminals Inc., defendants.

The said answers of the defendant thereto were taken down stenographically by Isabel Salas and were then forthwith transcribed by her under my direction, and the said transcript being then read over correctly to the said witness by me was then signed by the said witness in my presence.

This is a deposition of the witness Javier A. Zegarra Zavaleta taken pursuant to commission issued by the United States District Court Southern District of New York, in the Embassy of the United States of America at Lima, Peru, before Leon M. Johnson, Jr., Consul.

Appearance for the Defendant: Dr. Manuel Aguirre Roca, Estudio Romero of Lima, Peru.

Andres Javier Zegarra Zavaleta, of lawful age, being by me first duly sworn, deposes and says:

Q. State your full name and address. A. Andres Javier Zegarra Zavaleta, Chimbole, Peru.

Q. By whom are you employed and in what capacity? A. For Siderperu, as executive of that enterprise.

Q. Describe the business of Empresa Siderurgica del Peru ("Siderperu") and state the location of its facilities. A. Engages in the production and marketing of steel products. It is located in Chimbote, approximately 470 km. from Lima.

English Translation of Deposition of Javier A. Zegarra Zavaleta

Q. How long have you been employed by Siderperu and what positions have you held? A. I have worked for 2 years, 8 months in Siderperu, where I have held three positions:

—Logistics planning analyst
—Head, Section of Inventory Control
—Head, Raw Materials Planning Department

Q. State your position with Siderperu in November, 1974 and describe your responsibilities. A. I held an executive position as Head of the Section of Inventory Control. I was responsible for planning and controlling the supply of raw materials and main inputs for Siderperu.

Q. At which of Siderperu's facilities were you employed in November, 1974? A. In the Supplies Management.

Q. In September, 1974 did Siderperu issue purchase orders to buy approximately 10,000 metric tons of shredded steel scrap in equal amounts from Steelmet Export Company and Thyssen, Incorporated? A. It is so; O/C.E-10688 and E-o1782 for 5,000 MT each were issued on September 12, 1974.

Q. Did the purchase orders provide for inspection of the cargo of shredded steel scrap before shipment by an officer of Siderperu at the expense of the sellers? A. Yes.

Q. In November, 1974 did you inspect the cargo of shredded steel before it was shipped? If so, please state where you inspected the cargo and the date you inspected it. A. We checked part of the material in Providence on the 15th of November, 1974 proceeding then to Jacksonville, where part of the material to be shipped stood, on November 16, 1974.

Q. Did you meet with representatives of Steelmet, Inc., at Steelmet's office in New York City on or about November 21, 1974? A. Yes.

English Translation of Deposition of Javier A. Zegarra Zavaleta

Q. If you answered the previous interrogatory "yes", please state the name and position of any other employees of Siderperu who also attended the meeting at Steelmet's New York office on or about November 21, 1974. A. I was with Engineer Cesar Molina Fernandez, Materials Superintendent.

Q. State the name of the Steelmet personnel with whom you met on that day. A. With Robert M. Waisfisz, Vice-President of Steelmet, Mr. Barman, executive of that enterprise, and another functionary, whose name I don't remember because he did not give me his card but probably was connected with transportation of materials, and others.

Q. While you were at Steelmet's office, were you or Mr. Molina introduced to Mr. Avraamides? A. Aside from the aforementioned persons, there was an officer who took care of transportation matters, and who probably was Mr. Avraamides.

Q. Did you or Mr. Molina confer with Mr. Avraamides concerning the ships available to carry Siderperu's cargo from Jacksonville to Chimbote? A. —We discussed matters and we were told that it was difficult to find ships, but that two were about to arrive.

Q. If you answered the previous interrogatory "yes", please describe fully and completely the conversation with Mr. Avraamides concerning the selection of a ship to carry Siderperu's cargo. A. Due to the purpose of our trip and according to the instructions of the O/C, we insisted on having the material shipped as soon as possible, for it was needed at our enterprise.

Q. Specifically, did Mr. Avraamides tell you and Mr. Molina that two ships were available to carry the cargo? A. We were told that two vessels which were about to reach port would be available, and that the material would be shipped at the end of the month or early December at the latest.

English Translation of Deposition of Javier A. Zegarra Zavaleta

Q. Specifically, did you or Mr. Molina tell Mr. Avraamides to ship the cargo aboard the vessel which would arrive first in Chimbote? A. Yes, for the purpose of our trip was to check the material and to demand that the shipping date would be complied with. We tried to make this the earliest possible date.

Mr. Zegarra brought written answers to the questions contained in the deposition. He made references to these responses during his oral responses.

JAVIER ZEGARRA ZAVALETA

Subscribed and sworn to before me this twelfth day of May 1976.

LEON M. JOHNSON, Jr.
American Consul

ANSWERS TO SUPPLEMENTAL INTERROGATORIES.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ATLANTIC & GREAT LAKES STEAMSHIP CORP., Plaintiff, -against- STEELMET, INC., and TIDEWATER TERMINALS, INC., Defendants.	74 Civ. 5648 (CMM) ANSWERS TO SUPPLEMENTAL INTERROGATORIES

FILED U.S. DISTRICT COURT JAN 16 2 50 PM '76 S.D. OF N.Y.

Plaintiff, Atlantic & Great Lakes Steamship Corporation, answering the Supplemental Interrogatories propounded by defendants, alleges as follows:

2. Further answering the Supplemental Interrogatories plaintiff alleges as follows:

Voyage Results

MARY -Voy. #12
Scrap, Mobile/Matanzas

Income:	Freight	$152,050.68	
	Demurrage	37,833.33	
		$189,884.01	$189,884.01

Costs:

Hire-Sd. NY 08:45 Dec. 19 Arr Mobile 0730 Dec. 26	6D 22H 45M	
At. Mobile (Loading) 0730, Dec. 26/1415 Dec. 31	5D 6H 45M	
Sd. Mobile 1415 Dec. 31 Arr. Matanzas 0500 Jan. 11	10D 14H 45M	
At Matanzas (Discharging) 0500 Jan. 11/2005 Jan. 31	20D 15H 05M	
	43D 11H 20M	
@$4200 per day		$182,583.32

Fuel-Sd. NY 200IFO/35 MDO
Arr Mobile 70 IFO/32 MDO-130 IFO @80.07=10,409.10
3 MPO @118.08= 354.24

ANSWERS TO SUPPLEMENTAL INTERROGATORIES

@Mobile 565/26 74.71/107.86		
Sd. Mobile 592/57-43 IFO @80.07=	3443.01	
1 MD @118.08=	118.08	
Arr. Matanzas 405/42 TTL 187		
IFO 27@80.07=	2161.89	
IFO160@74.71=	11953.60	
MDO15@118.08=	1771.20	
@Matanzas 202@83.35		
Sd. Matanzas 450/42 IFO157@74.71=	11729.47	($ 41,940.59)
Port Charges-Mobile	$5089.08	
Matanzas	$4042.77	(9,131.85)
Commission		(6,938.56)
TOTAL (MINUS -		$ 50,710.31

Voyage Results

MARY -Voy. #13
Ore, Angra Dos Reis/Bremen

Income:	Freight	$245,062.13	
	Demurrage	59,265.63	Angra dos Reis
		5,228.13	Bremen
			$309,555.89

Costs:

Hire -Sd. Matanzas 20:05 Jan 31		
Arr. Angra 19:50 Feb. 12	11D 23H 45M	
At Angra (Loading)		
1950 Feb. 12/0300 March 7	22D 7H 10M	
Sd. Angra 0300 Mar 7		
Arr Rio 1200 Mar 7	9H	
At Rio (Bunkering)	10H	
1200 Mar 7/2200 Mar 7		
Sd. Rio 2200 Mar 7		
Arr Bremen 0800 Apr 1	24D 10H	
At Bremen		
0800 Apr. 1/2400 Apr 4	3D 16H	
	63D 3H 55M	
@$4200 per day		$265,285.40

ANSWERS TO SUPPLEMENTAL INTERROGATORIES

Fuel -Sd. Matanzas 450/42				
Arr Angra 210/30	240/12	240IPO@74.71	17930.40	
		12MDO @118.08	1416.96	
Sd. Angra 35/28		8IFO @74.71	597.68	
		167 IFO @83.35	13919.45	
		2MDO @118.08	236.16	
Arr Rio 30/26		5IFO@83.35	416.75	
402 @$81.00				
		2MDO@118.08	236.16	
		2IFO @83.35	166.70	
Sd Rio 430/26		28IFO@83.35	2333.80	
		380IFO@81.00	30780.00	
Arr Bremen	22/3			
		23MDO@107.86	2480.09	
In Bremen		22@ 81.00	1782.00	
		3@107.86	323.58	
		65@ 79.30	5154.50	
		5@102.60	513.00	
				$78,287.23
Port Charges	Angra Dos Reis	$4699.01		
	Bremen	$9000.00		
				$13,699.01
Extra Insurance				1,862.91
Commissions	$6,257.26			
	$1,481.64			
	$1,444.60			
	$5,513.90			
	$14,697.40			$14,697.40
	TOTAL	(MINUS $ -		$64,276.06

Dated: New York, New York
June 17, 1976

DONOVAN, DONOVAN, MALOOF & WALSH

BY: Rich E Rositto
A Member of the Firm

Attorneys for Plaintiff
161 William Street
New York, New York 10038
(212) 964-3553

TO:

THACHER, PROFFITT & WOOD
40 Wall Street
New York, New York 10005
Attorneys for Defendant

Excerpts From Deposition of Andreas Avraamides.

(3) A. I am export manager for Steelmet Export Company and chartering manager for Tidewater.

Q. You are employed by both Steelmet and the Tidewater Terminals, Inc.? A. These two companies are subsidiary companies of Steelmet, Inc.

* * *

(4) A. I have an exclusive broker; however, I deal with other brokers as well.

Q. Who is your more or less exclusive broker? (5) A. Antraship in Montreal.

* * *

Q. What are your duties for Tidewater Terminals, Inc.? A. I do all the chartering for Tidewater.

* * *

(6) Q. In November of 1974, did you go on the market to charter a vessel for carriage of cargo to Peru? A. Yes. I was in the market.

Q. Did you go through Antraship? A. Yes, I did go through Antraship.

Q. Were you seeking a vessel for a particular cargo? A. Yes.

Q. What was that cargo? A. It was about 10,000 short tons of scrap, shredded scrap.

Q. What was the loading port to be? A. Jacksonville.

Q. What was the discharge port? A. Chimbote.

Q. Was this to carry a particular cargo of scrap? A. To carry, as I said before, 10,000 tons of scrap, regular scrap.

Q. You already had a sales contract for that scrap? A. Yes.

Q. When did you first go on the market to seek a vessel for that cargo? A. Before we negotiated the contract.

Q. By the contract, you mean the sales contract for (7) the scrap? A. Yes. Just I wanted an indication, a freight indication.

Q. When did you negotiate the contract for the scrap? A. That I cannot recall. It was sometime before.

Q. Sometime before when? A. Before November. I don't remember offhand. I don't remember all the things that went on in the office.

* * *

(8) Q. Did you authorize Antraship to make a fixture for the Mary? A. Not a firm fixture, I didn't authorize them.

Q. Did you give them some authority? A. I gave them authority, yes.

Q. What was that authority? A. Subject to details and subject to receiver's approval, and gave them a time limit of twenty-four hours.

* * *

(9) Q. Did you receive that telex from Antraship? A. Yes.

Q. Was this telex in accordance with the instructions you had given Antraship? A. Yes.

Mr. Repetto: Would you mark this telex dated November 20, 1974 as Plaintiff's Exhibit A.

(Telex dated November 20, 1974 marked Plaintiff's Exhibit A for identification, as of this date.)

* * *

Q. What, if anything, did you do in relation to that telex on November 21st? A. Yes. We discussed this matter with the two (10) representatives of the receivers who were in the United States for about ten days.

Q. Who were these people? A. Mr. Molina and Mr. Zegarra.

Q. Where did these discussions take place? A. In our office.

Q. This was on November 21st? A. On November 21st and on November 22nd.

Excerpts From Deposition of Andreas Avraamides

Q. What was the subject of the discussions, generally what was said? A. We offered them two ships.

Q. Was this on the 21st? A. On the 21st. On the 21st or the 22nd, I cannot recall, because these persons were in our office. We named them the Mary and we gave them the details of the Mary and we gave them another ship, the M. V. Promethee. One was built in '67 and one in '57. The Mary was a very old ship.

We gave both ships the readiness to load at Jacksonville, and they have chosen the M. V. Promethee. It is customary on sales of C&F to give the receivers the name of the vessel, "stem" the vessels. In other words, ask them for their approval because they have to pay for the insurance. They have to insure the cargo.

(11) Since the Mary is an old vessel built in 1957, there is penalty extra insurance.

Q. Did the representatives of the buyer make a choice? A. Yes.

Q. When? A. That I cannot recall, whether it was the 21st or the 22nd.

Q. Which vessel did they choose? A. The Promethee.

* * *

Q. Did you advise Antraship of their decision? A. Yes. I advised Antraship verbally on the telephone.

Q. When was that? A. I think it was very late on the 21st, very late.

* * *

(17) Q. I would like to refer you to Page 2 of the purchase order. A. Yes.

Q. Subparagraph C, or it is Sub 1. It starts on the first page and there are a list of objections in it. (18) C says the use of ships with characteristics unsuitable for cargo.

Excerpts From Deposition of Andreas Avraamides

What does that mean to you, what was the intent? A. In our trade there are many disputes when the ship arrives at the discharging port, because scrap is a very difficult cargo to discharge from the vessel. It is customary that before we charter a vessel, we have to stem a vessel, we give the name of the vessel or details of the vessel and ask for their confirmation.

Q. In this instance, you gave the receivers a choice of two vessels; is that right? A. That is right.

Q. Why did you offer them two vessels? A. At the time we were in a hurry to ship the cargo because they were pressing us. We had one of our vessels open in Detroit at that time. —since the vessel was open at around those dates, we offered them that vessel because we didn't want to upset them.

Q. By this, are you referring to the PROMETHEE? A. Yes.

Q. And that vessel was under time charter to Tidewater? A. Yes.

Q. Why did you negotiate for another vessel? (19) A. I didn't want to give the PROMETHEE to them. It cost too much to bring the vessel from Detroit to Jacksonville. There are not many vessels sailing in ballast from the Great Lakes.

Q. When did the PROMETHEE arrive on the Great Lakes? A. On the 22nd, and she sailed on the 23rd.

* * *

Q. As of November 20th the vessel was inbound with cargo for Detroit? A. Yes.

Q. Did you have any other business booked for that vessel as of November 20th? A. I was offered many cargoes, which I didn't take.

* * *

(20) Q. —you offered both vessels to Siderperu? A. Yes.

Excerpts From Deposition of Andreas Avraamides

Well, of course I offered the M.V. MARY and when they declined it I gave them the PROMETHEE, which I had in position.

Q. First you offered them only the MARY? A. Sure. I offered the MARY.

Q. They rejected it and you don't know why?

Mr. Taliaferro: That is not the testimony.

Q. Why did they reject it? A. They rejected it because the vessel was old, since they are paying for the cargo insurance, the receiver this is a C&F sale, they have to insure the cargo.

Q. You offered the MARY, or you negotiated for the MARY on the basis of a GENJAPSCRAP sub-details; is that correct? A. Yes.

Q. What were the sub-details? A. The sub-details, there are three pages of rider of the GENCON charter party.

Q. That is the GENJAPSCRAP; is that correct? A. Yes. They have to be negotiated to—the terms, not all owners accepting all the terms.

(21) Q. If any owner accepts a vessel on a GENJAPSCRAP sub-details, what are these details?

Mr. Taliaferro: He just told you.

A. The terms are the usual scrap charter party terms which you have to negotiate.

Q. That is a GENJAPSCRAP, though, is it not? A. Not all charter parties are the same, you have to negotiate the terms.

* * *

(22) Q. Did you have a copy of that charter with you or in your office? A. I have many copies of GENJAP. I always fix on these terms.

Q. Those are the terms that you fix on? A. I didn't fix any terms with the MARY.

* * *

Excerpts From Deposition of Andreas Avraamides

(24) Q. I asked you what was a GENJAPSCRAP; when you offer a ship on a GENJAPSCRAP, what terms do you have in mind? A. Whatever terms are in our favor, we negotiate those terms.

Q. But you have certain set terms, do you not? A. Yes. We have certain set terms.

Q. Are not those terms the ones incorporated in the rider clauses? A. Yes. I would say yes. Part of this, yes, but not necessarily all of them.

Q. When you authorized Antrashi to go to the market to charter a vessel on a GENJAPSCRAP, what form, what terms did you have in mind? (25) A. No terms I had in mind. That is to be negotiated later on, after you negotiate the freight rate, the loading rate and the discharging rate. No fixture is completed without negotiation of the sub-details.

Q. I refer you to Exhibit A, the telex. In that, the loading and discharging rate have been agreed upon, have they not? A. They have been agreed only on the freight rate, the discharging rate and the demurrage rate and the loading rate, that's it.

Q. What does the line 2— A. It doesn't form a commercial fixture.

Q. What do the words "We confirm having fixed" mean to you? A. Having fixed, subject to more negotiations.

Q. What was left to be negotiated? A. I would say three pages of the rider.

* * *

(28) Q. You Tidewater-chartered the vessel to Steelmet, voyage-chartered the vessel? A. Internally, yes, I would say so. For internal bookkeeping.

Q. I show you a document produced by your counsel and I ask you if you can identify it. A. Yes. This is correct.

Excerpts From Deposition of Andreas Avraamides

Q. Was that document signed by both Tidewater and Steelmet? A. I would say so, internally, which still has nothing to do with—

* * *

(29) Q. When was this charter prepared? A. On the 22nd.

* * *

(30) Q. The voyage charter between Tidewater Terminals and Steelmet, dated November 22, calls for a freight rate of $38 per metric ton; is that correct? A. That is correct.

Q. How was that freight rate agreed?

* * *

A. There was no freight agreed. I just put the figure myself for internal bookkeeping.

Q. What freight was charged to Siderperu as part of your C&F price? A. It has nothing to do with the freight we charged. We don't charge freight to Siderperu. We just sell material on C&F basis.

* * *

(31) Q. What is that document? A. It is our invoice.

Q. Is that the invoice that was sent to Siderperu? A. Yes.

Q. In connection with this cargo from Jacksonville? A. Yes.

Q. That invoice was paid by Siderperu? A. Yes.

(32) Q. Who prepared that invoice, do you know? A. In my office.

Q. Under your supervision? A. Yes.

Q. It was sent out along with the other documents? A. Yes.

* * *

(41) A. It is a telex asking the receivers to confirm our agreement with their representatives in New York.

Q. When was this telex sent? A. I think on the 26th.

Excerpts From Deposition of Andreas Avraamides

Q. On November 26th? A. On the morning of the 26th, and it was sent out about noontime. In the morning.

Q. Who sent this telex? A. The secretary. I dictated it and the secretary sent it out.

Q. You dictated this telex? A. Yes.

Mr. Repetto: Let's have this telex marked as Plaintiff's Exhibit G.

* * *

(42) A. It was purely a confirmation telex, telling them what we discussed with Mr. Molina.

Q. Did Mr. Molina have the authority to accept or (43) reject vessels? A. If Mr. Molina had the authority to sign a contract, then he had the authority to.

Mr. Taliaferro: Which signature are you referring to?

The Witness: If Mr. Molina had the authority to sign the purchase contract, he had the authority to let us know about the shipment.

* * *

(44) Q. Did you send that telex? A. I think so. Yes, I send it. The reason we sent the telex, we wanted to get it in writing to owner's brokers. We wanted to have something in writing to produce it to them, because they were bugging us about this vessel.

* * *

(45) A. This is an answer to our telex.

Q. And a translation; the answer came in in Spanish, is that correct? A. Yes.

* * *

Q. I hand you another document produced by your counsel, and I ask you if you can identify it. A. Yes.

Q. Did you send that telex? A. Yes.

Q. Was that your response to their telex of November 28th? (46) A. Not really. We had the obligations to, when we charter a vessel, to give all details to the receivers, ETA and other details.

Excerpts From Deposition of Andreas Avraamides

Q. You say "With reference to your telex dated November 28th, please be advised that we have . . ." A. That's right. We chartered the vessel and we had to give them the details. It is our obligation to do that. We cannot send a ship without advising them in advance.

Q. This was Steelmet's obligation under its sales agreement? A. It is customary when we sell and supply a ship, we have to tell them that the ship is due at the discharging port at a certain date.

* * *

(47) Q. On the 22nd, the PROMETHEE was fixed by—A. Wait a minute.

Q. —Tidewater to Steelmet? A. I cannot agree on that question because the PROMETHEE was belonging to us, it was our ship and was never fixed. That is an internal bookkeeping.

* * *

A. Tidewater and Steelmet is the same company.

Q. But this document was prepared and signed by representatives of both. (48) A. An internal document, an inter-office memo.

Q. It was prepared on November 22nd? A. Yes.

* * *

(54) Q. Did you have any discussion with your broker as to what details you would insist upon? A. No, we didn't have any discussion. However after a fixture like that we discuss on the form all negotiations, all details of the rider, and if we come to an agreement, then we prepare a charter party.

Q. Did you discuss those details with Antraship? A. No.

Q. Why not? A. Because there was no fixture. The receivers rejected it and we didn't go into the negotiations.

* * *

Excerpts From Deposition of Andreas Avraamides

(57) Q. Were other particulars than the nomination of vessels with — A. I did not discuss anything else but shipping, only ten minutes or five minutes.

Q. With Mr. Molina. At that time you offered him the MARY and the PROMETHEE? A. I answered this question before.

Q. I am asking it again. I want to be sure of your answer. A. Yes, I offered the MARY and the PROMETHEE.

* * *

(58) A. This was chartered much earlier than November.

Q. It was in effect in November? A. It was in effect until the end of 1975. The time charter, we had it for one year, over a year.

Mr. Repetto: Let's have this marked for identification.

(Time charter party between Tidewater and owners of the PROMETHEE marked Plaintiff's Exhibit M for identification, as of this date.)

* * *

(60) Q. Mr. Avraamides, the so-called GENJAPSCRAP charter party which form was previously marked as Exhibit C. At or about November 20, 1974, did Mr. Pettersen request a copy of this form of you? A. Yes.

Q. Would you tell us who Mr. Pettersen was? A. I don't know who is Mr. Pettersen, all I know is that Mr. Pettersen requested it through Antraship.

Q. Did you give him a copy of it? A. I think somebody in our office gave him a copy but not me personally.

* * *

(63) Q. Do you recall when your office made a copy of the GENJAPSCRAP available to Mr. Pettersen? A. I don't recall it.

Q. Was it on November 20th? A. Certainly it has to be November 20th or prior to that.

* * *

Excerpts From Transcript.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

ATLANTIC & GREAT LAKES S/S CORP.,

Plaintiff,

against

STEELMET, Inc. and TIDEWATER TERMINALS, Inc.,

Defendant.

74 Civ. 5648

Before:

Honorable Charles M. Metzner, District Judge.

New York, New York
July 14, 1976—10:30 a.m.

Appearances:

Donovan, Maloof, Walsh & Kennedy, Esqs., Attorneys for Plaintiff, By: Richard E. Repetto, Esq., and Bartholemew Hennesy, Esq., of Counsel.

Thacher, Proffitt & Wood, Esqs., Attorneys for Defendant, By: George Taliaferro, Esq., and E. C. Kalaidjian, Esq., of Counsel.

(4) ARILD PETTERSEN, called as a witness on behalf of the plaintiffs, after being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Repetto:

Q. Mr. Petterson, by whom are you employed? A. A. L. Burbank & Co., Ltd.

Q. And what is your position with that company? A. I am vice president of the corporation and manager of the chartering department.

Q. How long have you been with A. L. Burbank? A. Since 1954.

Q. Are you what is known as a chartering broker? A. Yes.

Q. How long have you been a chartering broker? A. Oh, since about 1949, in Norway.

Q. In your capacity with A. L. Burbank, do you do any work for Atlantic & Greak Lakes Steamship Corporation? A. I certainly do.

Q. Would you describe your relationship with that company, please. A. We have always worked very closely with Atlantic & Greak Lakes for many, many years, and for the last several years almost on an exclusive basis, to do (5) almost all of their business.

* * *

Q. What is the business of Atlantic & Great Lakes, if you know? A. They are steamship operators. They time charter ships and run the ships in the freight bulk commodity trade.

Q. Do they specialize in dry bulk cargoes? A. Yes.

Q. How many ships do they operate normally? A. It varies. At that time, I think they had about fifteen ships—

Mr. Taliaferro: Can we specify the time you are referring to, please?

The Witness: I am sorry. In '74. About fifteen vessels. Today they have about eight or nine ships.

* * *

(7) Q. Did there come a time in 1974 where you became involved with a company called Antra Shipping of Montreal in connection with the vessel Mary? A. Correct, yes.

The Court: How do you spell that?

Mr. Repetto: A-n-t-r-a Shipping Company.

Q. Do you know who Antra Shipping Company is? A. I only know them as a name. I had never had any dealings with them before.

Q. How did you become involved with them? Would you describe what happened? (8) A. The company had quoted an order on the—what we refer to as the TNT, which is the Transport News Ticker. They had quoted this cargo of scrap from Jacksonville to Chimbote. And I contacted them, found out more about the cargo, and eventually commenced negotiations.

Q. What interested you in that cargo that you would respond to their particular notice? A. We had known about that this cargo could eventually become available because prior to this we had known about this cargo through some other charterers that we did business with, namely, Thyssen of New York. And at one time we had tried to work this cargo through them as the charterers. However, we were told that they were in partnership on this cargo with Steelmet and that Steelmet were the ones who eventually will do the freighting or chartering of this cargo.

Q. And approximately when did you contact Antra Shipping? A. I believe it was on the 18th or 19th of November when the order was first quoted on the TNT.

Q. This is 1974? A. 1974, yes.

Q. Who did you deal with at Antra Ship? A. Mr. Traa, T-r-a-a.

(9) Q. And do you know what his position was? A. Chartering broker, I presume.

> Mr. Repetto: It has been stipulated in the pretrial order that Antra Ship, Montreal, was the chartering broker for defendant Tidewater and in part for Steelmet.

Q. What was, if anything, attractive about this cargo. A. Well, Atlantic & Great Lakes were always interested in any cargoes down towards the West Coast of South America, such as Peru, because they had contracts out from Peru to Europe, and we had chartered several similar ships prior to this on steel and scrap down to Peru through other charterers. So, I mean it was always of basic interest to them.

Q. What were the contracts out that you referred to? A. Atlantic & Great Lakes, they had contracts of concentrates from Peru to Finland, I know of. I believe also some to the Continent.

Q. Were you the broker on the concentrates charters or contracts? A. No, I was not.

Q. How were you aware of them? (10) A. Because the ships that I had chartered down to Peru on previous occasions would be nominated against those contracts.

* * *

Q. Would you describe what you did in your coverings with Antra Ship? A. After preliminary talks, we started firm negotiations on November 20, 1974.

Could I check on something? Just to make sure I have the dates correct?

Q. Certainly.

(Pause)

A. On November 20, 1974, yes, and we exchanged offers and counteroffers that afternoon and finalized those negotiations late that afternoon or evening on (11) November 20. Those negotiations had covered the freight rate, the lay dates—

The Court: Wait, you are going too fast for me.

The Witness: I am sorry. The freight rate, the lay dates, the basic terms of loading and discharging, freight payment, demurrage. And the negotiations and the fixtures were subject to receivers of the cargo approval of the vessel the following day, and also subject to further final details of the charter party.

Q. What were the details? A. This is the normal way to negotiate, and I was notified next morning that—

The Court: That's on the 21st?

The Witness: 21st, yes.

A. I was notified that the terms the charterers wish to use would be based on a previous charter party, which I could pick up at Steelmet's office in New York.

Q. Did there come a time that Antra Ship responded in writing to your offers and counteroffers? A. Yes. It was confirmed by them on a TWX message dated November 20.

Q. I hand you what purports to be a Telex message of Burbank and ask if you can identify it. (12) A. Yes.

Q. And what is that message? A. Well, that is a confirmation of the negotiations we had had up until that moment.

* * *

(13) Q. Mr. Pettersen, I refer you to Exhibit 2 and ask you what the words "We confirm having fixed" mean to you as a chartering broker. A. That means—

> Mr. Taliaferro: I object to that, your Honor.
>
> The Court: Overruled. It's a word of art, isn't it? This man has been in the business since 1949. He can explain it for the record.

A. The word "fixed" means a finalization or a completion of negotiations.

Q. Now, you stated that you had made an offer and there had been a counteroffer during the negotiations. A. Right.

Q. Do you recall what the terms of your first offer were? A. Yes. The first offer which we made to the charterers was—you want me to repeat the offer?

Q. Please. A. The offer was on the vessel Mary, account Steelmet as charterers for 9,375 long tons of shredded scrap, stowing maximum 40 cubic feet, from Jacksonville to Chimbote, one safe berth, both ends, November 28, December 9, 2500 load, 800 discharge, weather working Shex unless used, (14) with $5,000 demurrage, half dispatch, $30 freight rate, fully prepaid, with 3¾ percent commission to Antra Shipping and others, subject details of the charter party.

That was our initial offer.

Q. What do the dates November 28, December 9 relate to? A. Those are the lay days at loading port.

Q. What are "lay days at loading port"? A. The lay days, this spread of lay days means that the charterers do not have to accept the vessel if she arrives prior to the lay day, the first day. And if the vessel has not tendered and arrived at the loading port by the last date, which is the canceling date, charterers have the option to cancel.

Q. So that is a spread of time within which the vessel may report to tender under the charter? A. Correct.

Q. Was there a counteroffer to yours? A. Yes.

Q. Do you know what the terms of the counteroffer were? A. Yes. The first counteroffer from the charterers was account Tidewater Terminal, Inc., as charterers, and I was told it was a subsidiary of Steelmet, (15) 9,375 long tons minimum-maximum of shredded scrap, stowing maximum 40 cubic feet of long ton vessel bale capacity. It was subject to charterer's approval of hatch sizes, one safe berth Jacksonville, one safe berth Chimbote, 2500 long tons load, 800 discharge and weather working Shex even if used, $4,500 demurrage, lay days November 27, December 9. The freight rate was $29. A commission of 3¾. Stipulation that negotions and eventual fixture to be kept strictly confidential and subject receiver's approval and on a modified Genjapscrap form.

Q. What is a Genjapscrap form? A. It's basically a Gencom charter party, which certain charterers years ago modified primarily to use for trading of scrap to Japan, and it's a standard, fairly standard form of scrap in the scrap trade.

Q. Now did you receive the counteroffer? A. On the phone.

Q. Did you make any notes of that offer? A. Yes, I have.

Q. Is that what you are referring to now? A. Yes.

Q. Could I see that sheet, please? A. Yes.

(Handing)

(16) Q. When was this yellow sheet prepared? A. This was during the negotiations. When I get into negotiations, I start on a sheet like that.

Q. And you make these notes at each conversation? A. Yes.

Q. After you received the counteroffer, what did you do? A. I obtained the hatch sizes—the charterers had made their approval subject to the hatch sizes of the vessel. I

obtained those and I made a counteroffer to this offer. I accepted the offer, accept rate of $29.50 95 percent of the freight to be prepaid, $5,000 demurrage, and I said we would go along with the receiver's approval, but for how long? Because it had not had a time limit at the time.

Q. Did you receive a reply to that? A. Yes. We received another reply where the charterers repeated their last offer, except they lifted their subject on the hatch sizes, which, in the meantime, they had approved, and it was subject receiver's approval of the vessel latest by 4 p.m. the 21st, the following day. That was that counteroffer.

Q. Was there any discussion of the Genjapscrap details on November 20? (17) A. No.

Q. Did they mention any particular charter to you? A. Not at that time.

Q. Did you accept that offer? A. No. We countered. We counteroffered to it.

Q. Was there a reply to your counter? A. Yes.

Q. What was the reply to your counter? A. I had counteroffered to that offer I just referred to still with 95 percent freight prepaid, $29.50 freight rate, and we agreed to the subject or receiver's approval by 4 p.m. on the 21st.

The charterers to that offer came back and made a counteroffer, accepted our offer except $29.25 freight rate, which we in turn confirmed.

Q. And then did you receive the Telex? A. This was late in the afternoon or evening on the 20th, and the Telex or—you are referring to Exhibit No. 2?

Q. Yes. A. Although I did not see it until the next morning. I notice it's stamped here 11:44 the next day. I believe that's our incoming.

Q. Thank you.

(18) You were referring during some of your answers to a notebook. Could you tell us what that notebook is? A. This is my daily notebook, or log, you can say.

Q. And what do you keep in that notebook? A. I register there usually initial orders or any other information or conversation that, you know, is important, but certainly not everything.

Q. Now, in the 21st, what occurred? A. On the 21st I was notified by Antra Shipping that the charter terms that the charterers wish to use could be based on a charter party identified under the vessel's name of Atlantic Freedom, dated November 8, 1972, which I could or which we could have picked up at Steelmet's office on Third Avenue. And I called Steelmet's office and I was referred to a Mr. Avraamides.

When I called Mr. Avraamides that morning, he was not available, but a lady—a lady's voice, told me that the charter party would be made available to us that afternoon after 3 o'clock; and I subsequently had a messenger from the office sent up and pick that up in the afternoon.

Q. I show you a document which was previously marked as Plaintiff's Exhibit C at the deposition of (19) Mr. Avraamides and Plaintiff's Exhibit 9 at the deposition of Mr. Kerwin and ask you if you can identify it. A. Well, it appears it is the same charter party that I picked up.

Q. Is that the Genjapscrap? A. It's Genjapscrap form of charter, yes.

Q. For the Atlantic Freedom? A. Atlantic Freedom, dated November 8, yes.

Mr. Repetto: I ask that this charter party for the Atlantic Freedom, dated November 8, 1972, be marked as Plaintiff's Exhibit 4.

Mr. Taliaferro: No objection, your Honor.

(Plaintiff's Exhibit 4 received in evidence.)

Q. After receiving this charter party, what, if anything, did you do? A. Went over the charter party and found that it was a standard form of charter on which basis

we had chartered many vessels before, and there were no terms here, you know, that were not acceptable to the owners.

Q. Did you discuss that charter party with anyone? A. The Atlantic & Great Lakes, the disponent owner or the owner, as far as I am concerned, gave me quote a flexible authority to accept terms and I went over the (20) charter party. The only thing that I did not wish to take completely on my own was the clause regarding the extra insurance. However, I discussed it with the owner and we agreed, and I subsequently notified Mr. Traa on the phone—it must have been late that afternoon—that as far as the owner was concerned, there were no objections to the terms of the Atlantic Freedom charter party as applicable to our trade.

Mr. Taliaferro: Excuse me, Mr. Repetto. Could you specify the day?

The Witness: This would have been late on the 21st.

Q. Who at Atlantic & Great Lakes did you discuss the charter with? A. Mr. Williams.

Q. Who is he, if you know? A. He is the president and the owner of Atlantic & Great Lakes.

Q. You said the clause you didn't feel you had authority on had to do with extra insurance. Would you tell us what clause that is? A. In this charter party, it's clause 33, which reads that "Any extra insurance on account of vessel's age, classification, flag, or ownership to be for vessel's (21) account, and charterers may deduct same from freight."

Knowing that there would be extra insurance on this cargo, I told Mr. Williams about it, but we had chartered several of these similar ships before with that clause and we accepted it as part of the trade.

Q. Did Mr. Williams agree to that clause? A. Yes.

Q. You stated that you had chartered other similar ships for the trade and to Peru. Do you know what ships they were? A. Yes. We had chartered—I believe these are the charter party dates—in February of '74 a vessel called the Good Trader, which is fairly much the same type of vessel as the Mary, with steel coils, down to Peru.

Q. Do you know who the receiver of that cargo was? A. No, I don't know who the receiver was.

Q. And what was the other one? A. There was another vessel with a similar cargo called the Agios Nicholaos IV, also with steel coils, down to Peru.

Q. Was there another? A. Another vessel called the Aurivarra, which we had chartered, with Prowler Scrap, for the account of Hugo Neu, N-e-u, Corporation.

* * *

(22) Q. What next did you hear from Antra Ship, if anything, in regard to the Mary fixture? A. Well, we did not get any word on the receiver's having approved the vessel which was due that afternoon of the 21st and we were told that they had not yet obtained the receiver's approval and we were asked if we would be patient and just wait.

Q. And who asked you that? A. Antra Shipping.

* * *

(23) Q. Did there come a time later when you heard from Antra Ship about the receivers? A. Yes.

Q. When was that? A. That was finally on the 26th of November at noontime. We were told that the receivers' representatives in the States had turned down the vessel.

The Court: Who told you that?

The Witness: Antra Shipping.

The Court: Who?

The Witness: Mr. Traa, T-r-a-a. He is the only gentleman that I ever spoke to there.

The Court: All right.

Q. And when was that again? A. That was, according to my notebook, at 12:10 on November 26.

Q. And what, if anything, did you do then? A. I asked the reasons for the turning down of the vessel and was told that the main objection was the vessel's age.

• • •

(24) The Court: What did you do with the Mary after November 26?

Q. Were you asked to do anything with the Mary as the trader? A. We were trying to find some other business for the vessel.

Q. And what did you do with trying to find other business? A. Well, we were covering the market the way we normally do on any ship.

Q. Would you describe what that means? A. Well, that is to contact charters and brokers both locally, as well as correspondents on the other side in Europe.

Q. Do you have correspondent brokers in Europe? A. Yes.

Q. Who are they? A. In London we have a company called Pyramid Maritime; in Oslo, another company called Fernley & Agar; we also correspond with companies in Hamburg.

Q. Did you correspond with these brokers for the Mary? A. We always do, yes.

(25) Q. Did you in this instance? A. I am quite sure we did.

Q. Did you come up with any employment for the vessel? A. No.

Q. Do you know how the vessel was next employed at all? A. I believe the owners eventually placed the ship under one of their contract commitments of gypsum, I believe, from Canada down to USA.

The Court: When was that?

The Witness: I don't know when.

Q. I would like to refer again to Exhibit 2, the line starting "November 27-December 9 (Present ETA November 28)." A. Right.

Q. What was that line of the Telex to show? What was the intent of it? A. Well, the intent of it was I had indicated the probable ETA of the vessel at the loading port.

Q. Where did you receive that information? A. From the owners' office. Probably from the owners' office.

Q. At that time—

(26) The Court: When you say "the owner," whom do you mean?

The Witness: Atlantic & Great Lakes.

Q. At that time, did you yourself know where the Mary was? A. Yes.

* * *

Q. On what day did you give that ETA? A. It would have been during the negotiations, i. e., the 20th of November.

Q. Did you ever alter that ETA? A. No.

Q. Were you ever asked for another ETA on the vessel? A. No.

The Court: What was the ETA?

The Witness: Expected time of arrival.

(27) The Court: I know that. When was it?

The Witness: November 28.

* * *

(28) Q. Mr. Pettersen, you testified you were first advised by Mr. Traa that the receivers had declined to approve the Mary on the 26th. A. That is correct.

Q. I show you a Telex which has been marked as one of the plaintiff's exhibits and it's dated November 21, 1974, and it refers to the nonapproval of the vessel. Would that refresh your recollection as to the fact that you could have been advised before the 26th that the receiver

had not approved the vessel? A. No. We just had no information that the vessel—we had no word—there had been no rejection, no comment at all.

Q. From whom? (29) A. From Antra Shipping.

Q. You are saying that you heard from Mr. Traa nothing with respect to the rejection of the vessel until the 26th. A. That is correct. I was told that they had had no word from the receivers and we were asked to be patient.

Q. When were you first told that they had had no word? A. On the 21st because that is when the subject was to be listed and I asked for it.

Q. Wasn't there a discussion as to an extension of time for 24 hours? A. The charterers requested could we be patient for another 24 hours.

Q. That would have put it over until the 22nd? A. Yes.

Q. You are saying from the 22nd until the 26th you heard nothing from Mr. Traa? A. That is correct.

If I may, when you say I heard nothing, I have no records here. I am sure we must have had conversations, but there was no concrete information as to the approval or the disapproval until the 26th.

(30) Q. Let me direct your attention to the third paragraph of this Telex of November 21. It says—this was a Telex sent by Atlantic & Great Lakes to South America. It says, "Only subject on this fixture was subject to receiver's approval on vessel which we are just now informed has been withheld." A. Yes.

Q. Now, my question to you is: How would Atlantic & Great Lakes have received that information if it hadn't been communicated through yourself? A. Yes, but it says "withheld." It doesn't say it has been rejected, that it has been declined. There had just been no approval or disapproval come forth.

Q. That's not what it says. It says "withheld," Mr. Pettersen. A. It doesn't mean "declined" or "rejected." Withheld, as far as I am concerned, means you just haven't heard anything.

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(31) Q. After the expiration of the 24 hours, you never told anyone at Atlantic & Great Lakes that you had been advised that the receivers' approval had been withheld? A. Not until the 26th.

The Court: Wait a second. You used the word "withheld." "Rejected" he said.

The Witness: Rejected on November 26. We were told, and I put this in here, "Receivers' representatives in the States have turned down the vessel." And when I asked on what reason, I was advised that the main objection was the vessel's age.

Q. My only point is, were you advised at any time prior to the 26th of that information?

The Court: Of the rejection.

Q. Of the rejection? A. No.

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(32) KEVIN J. KERWIN, called as a witness on behalf of the plaintiff, after being first duly sworn, testified as follows:

Direct Examination by Mr. Repetto:

Q. By whom are you employed? A. Atlantic & Great Lakes Steamship Corporation.

Q. And what is your position with that company? A. I'm the operations manager.

Q. How long have you been the operations manager for the Atlantic & Great Lakes company? A. Approximately seven years.

Q. When did you first join the company? A. September of 1969.

Q. Would you describe briefly the business of Atlantic & Great Lakes? A. Atlantic & Great Lakes Steamship Corporation is involved in the ocean transportation of bulk commodities using time chartered vessels to fulfill the commitments.

Q. In 1974, did Atlantic & Great Lakes operate a vessel called the Mary? A. We did.

(33) Q. When did you take on the Mary? A. The Mary came onto our hire in June of 1974, I think around the 20th or the 21st.

Q. That was on a time charter? A. That's correct.

* * *

Q. Can you tell us your involvement with the chartering of the Mary in November of 1974? A. Well, in November of 1974 the vessel was off and on and concluded subject to receiver's approval on a cargo of scrap from Jacksonville to Peru.

* * *

(34) Q. And how did this shredded scrap charter come about? When were you first advised of it? A. If my memory serves me correctly, I was first advised of it by Mr. Pettersen probably about the 20th of November when he informed me that they were working the ship on the cargo.

The Court: That they were what?

The Witness: Working the ship, trading the ship on the cargo.

The Court: I don't know what that means.

Q. Would you explain what trading or working a vessel means. A. The particular cargo would be put into the market as being open and we would offer one of our ships against it.

Q. Did Mr. Pettersen ever inform you of a conclusion of working the ship? A. He did advise me that the vessel had been concluded subject to the receiver's approval.

* * *

(35) Q. Do you know who the receivers were to be? A. Sider, Peru.

Q. Atlantic & Great Lakes carried cargo to Sider, Peru? A. Yes.

Q. Did you carry any cargos to Sider, Peru in 1974? A. Yes.

Q. What vessels, if any, were involved in those carriages? A. The Agios Nicolaos IV, the Auri Vaara, and the Good Trader.

Q. Do you recall approximately when those voyages took place? A. I do not without referring. They took place throughout 1974, towards the early part of the year, but to give you the actual month and date I wouldn't be able to do so without referring to records.

Q. You said Sider, Peru was the receiver on those cargos? A. That's correct.

Q. Is the Mary similar to those vessels? A. She is particularly similar to the Agios Nicolaos IV and the Good Trader.

(36) Q. There has been testimony that Atlantic & Great Lakes had contracts for concentrates from Peru.

Are you familiar with those contracts? A. Yes.

Q. Would you describe them for us? A. There is a continuing movement ore concentrates out of Callao, Peru, particularly to the European continent. We had during the year 1974 a contract for Cocaloa, Finland, and we also were able to pick up an extra cargo here and there to other ports in Europe.

Q. You had a contract of freight? A. Yes.

Q. That calls for more or less consecutive voyages or a series of voyages? A. It calls for a series of voyages, rather than consecutive voyages.

Q. Do you recall what the tonnage was under that contract? A. I can't say exactly without referring to the charter party, but I believe the total quantity was 57,000 metric tons.

Q. As of November 20, 1974, had that contract been completed? A. No.

(37) Q. So there was more cargo to be carried? A. There was, I believe, one cargo left as of November.

Q. Was it the intent of Atlantic & Great Lakes to carry that cargo? A. Yes.

Q. And what vessel were you going to use? A. The Mary.

Q. When would it have loaded? A. Subsequent to discharging the inbound cargo.

Q. As operations manager, were you aware of the terms of the fixture that Mr. Pettersen had negotiated? A. Generally speaking I was, yes.

Q. Were there any conditions to that fixture that you recall? A. Well, it was subject to the receiver's approval of the vessel and also subject to the terms and conditions of the Genjapscrap *pro forma* charter party.

Q. Had Atlantic & Great Lakes used the Genjapscrap form prior to November 1974? A. I believe on one occasion we did charter a ship under that charter party, but the *pro forma* itself is in our files.

Q. Of a Genjapscrap? (38) A. Of a Genjapscrap.

Q. Are you familiar with its terms as of November 20? A. Yes, I was.

Q. Did there come a time when you were advised that the alleged condition of receiver's approval had not been met? A. Yes.

Q. And when was that? A. Let me see. I believe the ship was fixed subject to receiver's approval within 24 hours, and I was advised the next day, the following day, that that subject had not been lifted.

Q. Did you do anything at that time? A. I sent a Telex to Sider, Peru.

Q. Who is Sider, Peru? A. Sider, Peru are the receivers.

Q. I hand you a document that has been identified. A. It is a Telex I sent to CPV.

Q. Who is CPV? A. Our agents in Peru.

Q. When was that Telex sent? A. On November 21.

Q. Did you prepare that Telex? (39) A. Yes, I did.

Q. What was the purpose of the Telex? A. To find out if there would be any problem in getting the receiver's approval.

Mr. Repetto: I ask Telex dated November 21 be marked as Plaintiff's Exhibit 6.

Mr. Taliaferro: No objection.

(Plaintiff's Exhibit No. 6 was received in evidence.)

Q. Did you receive a reply to that Telex? A. I believe we did, yes.

Q. Do you recall when you received that reply? A. I don't recall offhand.

Q. I hand you a Telex dated November 26.

Is that the reply that you just referred to? A. Yes.

Q. And whom did you receive that from? A. From CPV.

Q. And who is CPV again? A. Our agents in Peru.

Q. How long have you dealt with those agents? A. Oh, for a matter of two years at this point.

Mr. Repetto: I ask that Telex dated November 26—

(40) Mr. Taliaferro: If your Honor please, I object to the receipt of this Telex. It was sent to Atlantic & Great Lakes by its agent; therefore it is self-serving.

More basically, it is hearsay.

The Court: Let me see it.

Mr. Repetto: Your Honor, this Telex I would like to put in evidence now subject to other Telexes received by, or that were discovered in the files of, the defendant. And this Telex is subject to connection with the deposition evidence which has been filed with the Court of receiver's representative, Mr. Zavaleta.

Mr. Taliaferro: I would respond to that, your Honor, by pointing out that the deposition evidence that he is referring to refers to receiver's representatives not from Lima, but who were associated with the Chimbote plant of the receiver. These apparently emanated from the Lima office.

The Court: The same receiver, isn't it?

Mr. Repetto: They are one company, your Honor.

The Court: That's what I said.

Mr. Taliaferro: Nonetheless, your Honor, it is hearsay. He is offering it for the truth of the matter (41) stated therein, not just to show that it was merely sent or received.

Mr. Repetto: I am offering it for both.

We are dealing here with a question of whether a condition of a charter was actually met, and we are dealing with a matter of what we allege to have been a misrepresentation, and in getting evidence on that sometimes you are forced to hearsay.

Since the testimony of the receiver was sought by defendant and has been filed, I offer this subject to connection with that.

Mr. Taliaferro: In response, your Honor, I would point out, your Honor, that counsel for the plaintiff propounded no cross-interrogatories when we did depose the receiver's representatives, nor did he himself examine any representatives of the receiver in South America. And the Telex plainly states, "Receiver of cargo informed."

That, I submit, makes this the rankest hearsay conceivable.

The Court: What are you talking about?

Mr. Taliaferro: The third line, your Honor. The agent is purporting to relate something that it was allegedly told.

The Court: I will take it subject to connection.

* * *

(42) Q. Did you receive a reply to your November 27 Telex? (43) A. I believe we did.

Q. Is this the reply? A. Yes.

Q. And that was from CPV? A. That's correct.

Q. And what day did you receive that reply? A. November 27.

Mr. Repetto: I ask that two Telexes dated November 27 be marked as Plaintiff's Exhibit 8.

Mr. Taliaferro: If your Honor please—

The Court: Make them separate.

Mr. Repetto: The first one is Plaintiff's Exhibit 8, which is the Telex from AGL.

(Plaintiff's Exhibit No. 8 was received in evidence.)

Mr. Repetto: Telex of November 27 received by Atlantic & Great Lakes as Plaintiff's Exhibit 9.

Mr. Taliaferro: I object to the receipt in evidence of that Telex dated November 27, again on the ground of hearsay.

The Court: Overruled.

* * *

Q. After receiving those Telexes, what, if (44) anything, did you do in relation to the Mary? A. Well, as I recall the situation, the potential charterers insisted that the vessel was unfixed and we sought other employment for it.

Q. How did you seek such other employment? A. We advised A. L. Burbank to go into the market both locally and in the European markets to see if there was other cargo available for the vessel.

Q. Did they give you any other cargos? A. At one time I believe they quoted a cargo of potential possibility of phosphate rock from Tampa to Nova Scotia for the account of Erko, but the vessel wasn't quite suited for the cargo and the cargo was a possibility and not firm.

Q. So you did not carry that load? A. No.

Q. How did you employ the Mary after the 27th? A. Nominated against a contract of affreightment we had with the Celotex Corporation to lift gypsum from Halifax to Edgewater, New Jersey.

Q. Did the vessel perform that contract? A. She did.

Q. Then what happened? A. The vessel performed on the one voyage from (45) Halifax to Edgewater. She dry-docked for a period of approximately three days in Hoboken and then she proceeded in ballast to Mobile, Alabama, where she loaded to a cargo of scrap to Metanzes, Venezuela.

Q. I would like to go back in time.

You stated that the negotiations for the Jacksonville-Chimbote cargo took place on or about November 20, is that right? A. 20th or 21st.

Q. Were there other cargos being offered at that time? A. Not to my recollection.

Q. Let me see if I can refresh your recollection.

I hand you a document and ask you if you can identify it. A. This is my desk log.

Q. And will you tell us how that document is made? A. It's a daily log that I keep of telephone calls that I make and receive from the office.

Q. I refer you to—

The Court: Before you do that, shouldn't you give me the dates when they took this gypsum from Halifax to Edgewater, when it took the scrap from Mobile to (46) South America?

Mr. Repetto: I will, your Honor.

Q. Would you tell us when the Mary performed on the Celotex contract? A. I can only do it by referring to the notebook for the exact dates.

(Pause)

A. The vessel was expected to arrive up there December 4th, 5th. I'm looking for the exact arrival date, time, at Halifax that is.

(Pause)

Q. I had you a file. Maybe this will help you.

The Court: We will have a short recess. You can look up the dates then.

(Recess)

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(47) (In open court)
The Court: You may proceed.

By Mr. Repetto:

Q. Mr. Kerwin, could you tell us when the gypsum voyage took place? A. The vessel arrived in Halifax on December 7.

Q. 1974? A. 1974.

Q. And did it load there? A. It did.

Q. And how much cargo did it load? A. 14,313 long tons.

Q. And where was that cargo discharged? A. Edgewater, New Jersey.

Q. That was pursuant to a contract with Celotex? A. That's correct.

Q. Was freight paid on that voyage to Atlantic & Great Lakes?

The Court: Wait.
When was it discharged?

The Witness: Vessel arrived in New York on December 10 and discharging was completed on December 14.

The Court: All right.

Q. Was freight paid on that voyage? (48) A. Yes, it was.

Q. Who paid the freight? A. The Celotex Corporation.

Q. Do you recall the amount of that freight? A. I do not recall it offhand.

Q. Does this refresh your recollection? A. Yes.

Q. What was the total freight paid to Atlantic & Great Lakes? A. $75,075.

Q. Did Atlantic & Great Lakes make a profit on that voyage? A. Yes.

Q. What was the amount of the profit? A. $680.

Q. How do you calculate that? A. We take the ocean freight that we receive, less the expenses of the voyage.

Q. What were those expenses? A. The daily hire of the vessel.

Q. What was the amount of the daily hire? A. 0$4,200 a day.

Q. What other expenses? A. Fuel costs.

(49) Q. What were the fuel costs on that voyage? A. $14,795.

Q. And what other expenses? A. The port charges at Halifax and at Edgewater.

Q. What was the amount? A. The total of the two combined was $5,000.

Q. Were those port charges paid by Atlantic & Great Lakes? A. They were.

Q. After the vessel completed discharging on December 14, where did it go? A. It proceeded in ballast to Mobile, Alabama—I'm sorry, the vessel drydocked in Hoboken for three days.

Q. During that period was the vessel off hire? A. Yes.

Q. That means that Atlantic & Great Lakes did not have to pay hire for that vessel during that period? A. That's correct.

Q. Or pay any of the other expenses? A. That's correct.

Q. That is an off hire under the time charter that you had with Compania Reginald, the owners of the Mary? A. That's correct.

(50) Q. Exhibit 1.

When did the Mary resume service under the time charter to Atlantic & Great Lakes? A. I believe she sailed from Hoboken on the morning of December 18.

Q. 1974? A. 1974.

Q. And then you were again paying hire—

The Court: What date?

The Witness: December 18.

Q. And where did the vessel go from there? A. The vessel proceeded to Mobile, Alabama.

Q. And when did it arrive in Mobile? A. The vessel arrived in Mobile, Alabama on December 26, 1974.

Q. And what was the purpose of directing the vessel to Mobile? A. To load a cargo of scrap.

Q. Pursuant to a charter party? A. Yes.

Q. Was that cargo lifted? A. Yes, it was.

Q. Where was it carried to? A. Metanzes, Venezuela.

(51) Q. When did the vessel arrive at Metanzes? A. The vessel sailed from Mobile on December 31, 1974, and she arrived in Metanzes on January 11.

Q. Was freight paid to Atlantic Great Lakes on that voyage? A. Yes, it was.

Q. What was the amount of the freight? A. I don't recall the amount of the freight exactly.

Q. I'm sorry. I gave you the wrong thing. A. The freight received was $152,050.68.

Q. Let me revert.

I asked one question as to the gypsum cargo and I don't recall if it was answered.

I asked if Atlantic & Great Lakes made a profit on the carriage of gypsum from Halifax to Edgewater, New Jersey.

The Court: $680.

Mr. Repetto: He did, all right. I'm sorry.

Q. Now, what was the freight on the cargo from Mobile paid to you? A. $152,050.68.

Q. And were there voyage expenses incurred by Atlantic & Great Lakes on that trip? (52) A. Yes.

Q. What were the voyage expenses? A. The daily hire of the vessel.

Q. What was the amount? A. $182,583.32.

Q. Were there other expenses? A. There were the fuel costs. It totaled $41,940.59.

There were port charges of $9,131.85.

There were commissions on the freight paid of $6,938.56.

Q. Was there a profit made on that voyage? A. No.

Q. Was there a loss? A. The vessel showed a loss of $50,710.31.

Q. Where did the vessel go from Metanzes? A. After Metanzes, the vessel proceeded in ballast to Angra Dos Res in Brazil.

Q. When did it arrive there? A. The vessel arrived on February 12, 1975.

The Court: Wouldn't that have been outside the period?

Mr. Repetto: It would have been outside, your Honor. I'm not going into that one.

(53) Q. Is it part of your duty to prepare voyage estimates? A. Yes.

Q. What is a voyage estimate? A. Voyage estimate is a document that is prepared prior to entering into the negotiations for a particular cargo in order to see the return that the voyage would show, if any.

Q. Did you do a voyage estimate for the proposed shredded scrap cargo from Jacksonville to Chimbote? A. I did.

Q. Would you give us the details of that estimate, please. A. We estimated that the cargo would show a net freight revenue of $263,935.55.

Q. What was that based on? A. That was based on loading 9,375 long tons of cargo at $29.25 per long ton, less 3-3/4 percent commission, equals $10,283.20.

Q. And did you also do the estimates of the expenses on that voyage? A. We estimated that the total voyage would take 30 days at a daily hire rate of $4,200, is $126,000.

(54) Q. What did you base your estimate of 30 days on? A. Well, the voyage from St. Croix to Jacksonville.

Q. How long would that have taken? A. We estimated four days.

Q. Do you know the distance involved? A. 1,194 nautical miles.

Q. What other item did you have in your voyage estimate? A. We allowed five days loading in Jacksonville.

Q. What did you base the five days on? A. The fact that we believed the cargo would load at approximately 2,000 tons per day.

Q. And where did you get that figure of 2,000 tons? A. By checking with the agents in Jacksonville.

Q. And what was your next item? A. Jacksonville to Cristobal, the Atlantic side of the Panama Canal, a distance of 1,516 nautical miles, or five days. We allowed one day for transiting the Canal, and we allowed four days for proceeding from the Pacific side of the Canal to Chimbote, which is a distance of 1,163 miles.

Q. Where did you get those mileage distances? A. I got them from the Waterman's book.

Q. Is that a book of nautical miles between (55) different ports of the world? A. Yes. It's a book prepared to give the distances between various ports in the world for handy reference.

Q. What other factors did you put in on the voyage estimate for the cargo to Chimbote? A. We allowed eleven days for discharging in Chimbote.

Q. What did you base the eleven days on? A. On the fact that the cargo would probably discharge at the rate of 1,000 tons a day.

Q. Would it have been longer if the rate was lower? A. Yes. It would be correspondingly longer if they discharged at a lesser date.

Q. What if the rate were 800 tons a day, how many days would you have been there? A. We would have been there approximately twelve days, perhaps thirteen.

Q. Did you make any allowance for days not working? A. We made an allowance of one day.

Q. What did you base the one-day allowance on? A. The fact that if the vessel would be in port (56) for ten days there would be at least one Sunday involved which would probably be a nonworking day in Peru.

Q. Did you make any allowance for holidays? A. No.

Q. What did you expect the date of arrival of the vessel in Chimbote to be? A. Well, based on a projected loading schedule in Jacksonville of the end of November, we would expect that the vessel would be in Chimbote on or about the 16th, 17th of December.

Q. Wouldn't there have had to be an allowance for holiday then, considering Christmas? A. Yes, there perhaps should be an allowance for a holiday.

Q. That would add another in-port day? A. It could possibly, yes.

Q. And what would the in-port expense for a day be? A. Approximately—well, it would the daily hire rate, $4.200, plus about 3 tons of fuel consumed.

Q. What was the cost at that time of what 3 tons of fuel would have been? A. It would be about $225.

Q. What other factors did you put into your voyage (57) estimate? A. Estimate of the fuel to be consumed.

Q. How much was that? A. Total figure for intermediate fuel oil was $27,450, and for Diesel oil was $1,650.

Q. On what did you base your estimates of the vessel's consumption? What factors did you use to reach these amounts? A. Our experience with the vessel over the six months that she had been on our time charter was that she consumed about 19 tons of fuel at sea.

Q. And how much did she consume in port? A. It would vary, depending on the climate and whether the vessel was shifting or not, but it could be anywhere from 3 to 7 tons a day.

Q. And you expected 3 for Chimbote? A. Yes.

Q. Why did you pick 3? A. We used 7 for Chimbote; I'm sorry.

Q. The higher consumption? A. Yes.

Q. And what was the balance line of your voyage estimate for the projected voyage from Jacksonville to Chimbote? (58) A. In addition to the fuel costs that have already been mentioned, we calculated total port charges, including the Panama Canal transit, of $13,000, which showed a potential profit of $95,835.55.

Q. That profit would have been reduced if the port time was increased at Chimbote; is that right? A. Well, potentially, yes. There comes a point when the vessel would have gone on demurrage, if she exceeded the charter party warranties as far as the discharging is concerned, when the demurrage would begin to pay us back for the time lost.

Q. What would the demurrage rate have been? A. I don't recall what demurrage rate was agreed on in the negotiation of the vessel.

Q. But there was one agreed upon, to your knowledge? A. Yes.

Q. Your projected profit, then, was how much? A. $95,835.55.

The Court: How much?
The Witness: $95,835.55.

Q. When would the voyage on the proposed scrap charter have ended, according to your estimates? A. Well, everything goes according to plan, the (59) voyage would have ended about the very last days of December, December 30, 31, 1974.

Q. And by that time the vessel actually was engaged in what voyage? A. She was en route—well, she sailed on December 31 from Mobile to Metanzes, Venezuela.

Q. She sailed on what date? A. On December 31 from Mobile, Alabama to Metanzes.

Q. With a cargo? A. Of scrap, yes.

The Court: When did she arrive in Venezuela?
The Witness: She arrived, I believe, on February 11.
The Court: All right.
The Witness: I'm sorry. It was January 11, 1975, your Honor, 1975.

Q. In calculating the length of the voyage did you consider the vessel's speed? A. Yes.

Q. And what speed did you use? A. I calculated basically a speed of 11-1/2 knots.

Q. And what did you base that on? A. Basically, our experience with the vessel.

(60) Q. Over the prior months? A. Yes.

Q. Do you recall what the charter party speed of the Mary was? A. Charter party speed was 11 knots.

Q. That is what the owner warranted? A. That's what the owner guaranteed, yes.

Q. But your experience was that she could perform at better than that? A. From time to time, particularly with the following current, the speed would exceed 11 knots.

Q. Could there have been following currents going south to Peru? A. There would be to the Canal, but from the Canal down to Chimbote she would be going against current.

Q. Did you take those factors into consideration in making your voyage estimate? A. Not particularly, no.

Q. Do you have any idea as to what difference there would have been if you took the currents from Balboa south in connection with steaming time? A. I would estimate the difference would probably be a day and a half to two days.

Q. So that would increase your expenses by hire (61) for those two days? A. Yes, and the fuel.

Q. What would the fuel be for a day and a half?

The Court: You have already given me a figure. What are you trying to do, build it up more?

Mr. Repetto: No, your Honor. I'm trying to reduce it because the claim was overestimated and I'm sure it will come out on cross examination, and I'm not trying to hide it, that the days in the voyage estimate are too low and that the vessel would probably have incurred more so that the profit would have been less than has been stated.

I'm sure it will come out on cross examination. I'm just trying to get to it now and put it on the record.

The Court: Well, give me a figure. I'm not writting all this down. I'm not going to wait for the minutes to be transcribed, so give me a figure.

Mr. Repetto: I will ask him for a figure.

Q. On the basis of the currents, how much longer would the voyage then have taken? A. A day and a half.

Q. And what would the increased cost factors on that be? A. Approximately $9,500.

(62) Q. So, therefore, the profit would have been reduced by that.

And what would your net profit have been? A. It would reduce the profit to approximately $8,500.

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Cross Examination by Mr. Taliaferro:

Q. Mr. Kerwin, I notice that you estimated five days for loading in the Port of Jacksonville. A. Yes.

Q. I also notice that there was an ETA on the Telex of November 20 of November 28. A. That's correct.

Q. November 28 was Thanksgiving, was it not? A. Perhaps it could be. I don't know.

Q. Let's assume it was.

Under the provisions of the Genjapscrap charter party form, could the vessel tender notice of readiness on a holiday? A. No.

Q. When would the vessel tender notice of readiness? (63) A. On the following day.

Q. What does the Genjapscrap charter party provide with respect to the commencement of lay time after notice of readiness is given? A. Going on my memory, I believe it provides that time commences at 1300, if the notice is given before noontime. Otherwise at 0800 the next day.

Q. I direct your attention to a copy of the Genjapscrap charter party form. I ask you if that refreshes your recollection as to when it would commence. A. Clause 20 in the rider provides that "The load port to commence at 8:00 a.m. the first working day after notice is given, whether vessel in berth or not. Notice of readiness to be given in writing within office hours."

Q. So, if notice of readiness were given at 8:00 a.m. —I'm sorry.

Under this provision, lay time then would commence at 8:00 o'clock on Saturday; is that correct? A. That's correct.

Q. And how many days or how many hours, rather, would the vessel be on lay time on Saturday under the terms of the Genjapscrap charter party form? A. I believe the clause says the time ceases on (64) Saturday at noontime until 0800 on Monday.

Q. Will you specify which clause that is for us?

The Court: What is the point of this?

Mr. Taliaferro: Your Honor, what I am trying to point out is that his estimate is unduly short. The lay time is specified or a lay time calculation can be made, which is what he did. But you also have to take into consideration certain provisions in the charter party form which exclude from lay time holidays, Sundays, Saturdays, for example, from 12:00 o'clock until Monday at 8:00 o'clock.

Mr. Repetto: If not used.

Mr. Taliaferro: If not used—no, even if used, I beg your pardon.

A. Clause 19 provides "Time from noon Saturday until 0800 on Monday not to count even if used."

Q. Is there any obligation, or let me put it this way: Can the owner of the vessel compel a charterer to work his vessel on holidays or Saturdays or Sundays or the periods excluded under the clauses you just referred to? A. The owner cannot compel the charterer to work the vessel, but the owner may elect in his own right to work the overtime.

(65) Q. The owner doesn't have anything to do with it, does he? It's the charterer that is loading and discharging the vessel? A. But, as a matter of practice, the stevedores will work the vessel if you pay the overtime differential.

Q. Who pays the overtime? A. It's usually a matter of negotiation. The charter party will make a provision for overtime payments and then it becomes a matter of discussing it with the stevedore and working out an arrangement, if you so choose.

Q. But that's a hypothetical situation that you are just posing; is that correct? A. Well, yes.

Q. All right.

In your calculations, Mr. Kerwin, and I'm referring to your voyage expenses, did you allow for any such overtime? A. No, we did not.

Q. Now, I direct your attention to the eleven-day period which you allotted for discharging in Chimbote, and I would ask you the same questions:

If the vessel had been there over, we will say, the Christmas holidays, under the clauses you just referred to, would there have been any obligation on the (66) charterer to work Saturdays, Sundays and holidays, under the provisions of the Genjapscrap charter party form? A. There is no obligation on the part of the charterers.

Q. When would notice of readiness—I'm sorry, when would lay time have commenced? A. In the same manner at loading port at 0800 after due notice was given after office hours.

Q. Mr. Kerwin, you mentioned a charter party dated December 16, 1974, pursuant to which cargo was discharged at Caracas. A. The vessel—

The Court: Metanzes.

A. Metanzes, Venezuela.

I don't recall him mentioning the date of the charter party.

Q. Do you recall how many days were consumed in discharging at Metanzes? A. I don't recall. I would have to refer to the file.

Q. I show you answers to supplemental interrogatories and I refer to the reference to "at Metanzes discharging."

The vessel was in Metanzes for a matter of (67) 20 days, 15 hours and 5 minutes.

Q. Do you know how much cargo was being discharged at that time? A. I would have to check the bill of lading but the total cargo was—

Q. I'm sorry. Excuse me. A. —9,323 net tons or short tons.

Q. What does it say in the charter party? A. In relation to what?

Q. In relation to the amount of metric tons. Doesn't it provide 8,200? A. 8,200 metric tons shredded scrap, minimum—maximum; that's correct.

Q. Now, Mr. Kerwin, in your calculations with respect to the number of days' sailing time, did you take into consideration weather factors? A. No.

Q. You assumed good weather; is that correct? A. Yes.

Q. Did you take into consideration the possibilities of engine difficulties? A. No, I did not.

Q. Had the Mary experienced engine difficulties in the past? Say, in November, specifically. (68) A. On one occasion she had an engine breakdown of 10 hours at Surinam.

Q. Do you remember the date of that? A. No, I don't.

Q. Would it refresh your recollection if I were to show the port log for Surinam? A. "On account of engine trouble vessel sailed on November 11 at 1450 hours."

Q. There is a reference there to engine trouble? A. Yes.

Q. Isn't it true a week later the Mary encountered engine trouble in St. Croix? A. I believe there is a reference to a loss of time of approximately 3 hours in berthing at St. Croix because of an engine difficulty.

Q. Would it refresh your recollection if I were to show you the port log for St. Croix, specifically Alcuroix, and ask you if there isn't a reference from 1200 hours to 1700 hours on account of the vessel being "disabled"? A. On November 15 there was 5 hours lost.

* * *

(69) Q. You mentioned a contract with the shipper in Callao? A. Yes.

Q. Spell that for the reporter, please. A. C-a-l-l-a-o.

Q. Do you have that contract with you? A. I do not.

* * *

(78) ANDREAS AVRAAMIDES, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. Taliaferro:

Q. Mr. Avraamides, by whom are you employed and in what capacity? A. By Steelmet, Inc.—

The Court: By whom?
The Witness: Steelmet, Inc.

A. —as export manager, chartering and ship operations manager.

Q. Are you also employed by Tidewater? A. Tidewater is a subsidiary of Steelmet.

Q. What is your position with Tidewater? A. Charter manager.

* * *

(79) Q. Can you tell us the relationship of Steelmet Export and Tidewater to Steelmet, Inc.? A. Tidewater is a stevedoring company and ship operator as well.

Steelmet Export Co. does all the exports for Steelmet, Inc.

Q. Do they stand in the relationship or parent and subsidiary to one another? A. All the same company, public company, member of the American Stock Exchange.

* * *

(81) Q. I show you a document entitled "Purchase Order," dated September 12, 1974, and ask you if you can tell us what this is. It's in two parts. Maybe you could identify each part. A. This is a purchase order from Sider, Peru, signed by Cesar Molina, who in fact was in our office and rejected the ship.

The Court: That isn't what you were asked.

Q. Tell us what this document is. A. This is a purchase order from Sider, Peru that they purchase from us 5,000 tons.

Q. Is there a translation annexed to it? A. Yes, there is a translation.

Q. And on a C & F sale who handles the insurance? Who pays for the insurance on the cargo? A. The buyer of the cargo.

* * *

(82) Q. Mr. Avraamides, were there any changes made in the terms of the purchase order? A. Yes, there were changes.

Q. Can you tell me what changes were made? A. The discharging rate, from 700 tons a day to 800 tons per day. The shipment date was moved up to November 25, from third quarter in 1974.

The Court: Do you call that moving up or delayed?

The Witness: Delay of shipping the material.

The Court: He said from the third quarter to November.

The Witness: In the contract was third quarter, 1974.

The Court: So you delayed delivery; right?

The Witness: Yes.

Q. Of the shipment? A. Of the shipment.

* * *

(85) Q. Who is Mr. Traa and where is he located? A. Mr. Traa is president of Antra Shipping Company in Montreal.

Q. And after you had these discussions, then what happened? A. Well, he went into the market and he offered me a number of vessels, indications, and one of these offers was the Mary.

Q. When did he mention the Mary to you? A. Some time before November 20; I suppose November 18, 19.

Q. What did he tell you? A. He gave me the details of the Mary and owner's offer, which it was attractive to me, and we make a few counteroffers, negotiations on that, and on November 20 we concluded the rate, the freight rate, loading, (86) discharging, lay days, on basis subject to receiver's approval of the vessel and subject to sub-details.

Q. Now, what do you mean by the term "sub-details"?

The Court: What?

Mr. Taliaferro: "Sub-details," s-u-b.

Q. That means subject details; is that correct? A. Subject details. To negotiate further details on the charter party.

Q. Which charter party did you have in mind? A. I have in mind Genjapscrap charter party.

* * *

(87) Now, before lunch you mentioned the details of the Genjapscrap form.

I show you now a copy of the form and I wonder if you would tell us what clauses you were referring to when you mentioned the details. (88) A. Everything from the beginning to the end with the exception of what we agreed.

The Court: What?

The Witness: All terms to be negotiated from the beginning to the end, with the exception of the terms we agreed on the Telex.

The Court: Are you telling me that it is the custom in the trade?

The Witness: Custom of the trade, sub-details.

The Court: It means to negotiate everything in the contract except what was set forth in the fixture?

The Witness: Yes.

The Court: Go ahead.

Q. Mr. Araamides, were you ever informed by Mr. Traa that the plaintiff was prepared to agree on all other clauses set forth in the Genjapscrap charter party form? A. We never agreed to any terms with the exception of what is on that Telex, the freight, loading rate, discharging rate, the lay dates, and if there was any demurrage.

Q. The Telex you are referring to is the one of November 20? A. Yes.

(89) Q. After you received the Telex of November 20, did you confer with any representatives of the receiver? A. Not at the same day, but the next day, either the 21st in the afternoon, or the 22nd in the morning.

At that time, the two representatives from Sider, Peru were with senior vice president Mr. Waisfisz.

Q. Can you tell us the names of the two representatives? A. Mr. Molina and Mr. Zegarra.

Q. I show you now a couple of business cards and ask you if you can identify those. A. Yes.

The Court: I want to get this straight.

You are telling me that, when the fixture was issued you had no contract?

The Witness: No contract, no charter party, nothing; only that Telex.

Mr. Taliaferro: It's a Telex and we object to the characterization of the term "fixture."

The Witness: We do not consider it as a commercial fixture. It's customary in the shipping trade that all details have to be negotiated.

The Court: That isn't what our Court of Appeals has said.

* * *

(90) Q. Would you describe the meeting you had with these two gentlemen? A. I was in my office and Mr. Waisfisz called me into his office where he had these two representatives, (91) and they ask me through an interpreter if I had any ship for their material.

I said yes, I have a ship. I gave them the details of the Mary, the lay dates, which was November 27, 28, December 9. I give them the age of the vessel, and I warned them that it would be a penalty on extra insurance.

Then they said whether I had another vessel.

Q. Who said that? A. One of the two representatives.

And Mr. Waisfisz said that we have a ship which is on time charter to us. It's in Detroit very soon, and she will be in Jacksonville the end of November.

Mr. Zegarra had a little conference in Spanish with him—

Q. With whom A. Mr. Molina.

—and they said they wanted the Promethee to perform this voyage.

The Court: When was this happening?

The Witness: On November 21, late in the afternoon, or the next day, because these people they were in our office for about ten days. But not on November 20 they were not in our office.

The Court: You say they were not in your (92) office on November 20?

The Witness: On November 20 they were not in our office. They were traveling to see the material.

The Court: When did this conversation take place?

The Witness: On the 21st or the 22nd. I cannot recall that.

Q. You do recall whether it was either in the afternoon of the 21st— A. The afternoon, or in the afternoon.

The Court: He first tells me he can't recall, and now you are putting words in his mouth that he can recall.

What is the testimony of the witness?

Mr. Taliaferro: He testified either the 21st or the 22nd. I am asking if he has any recollection about the 21st, whether it was in the morning or the afternoon.

The Court: If he can't tell us the 21st or 22nd, why ask him if it was in the morning or afternoon of the 21st?

Mr. Taliaferro: He might be able to narrow it down.

The Court: We are worrying about days, not morning or afternoon.

(93) He says he can't tell you whether it's the 21st or 22nd.

Mr. Taliaferro: He said either one or the other.

The Court: He said he can't tell you which one it was.

Q. Mr. Avraamides, have you described the entire conversation you had with Mr. Molina and Mr. Zegarra? A. Yes.

Q. And what, if anything, did you do after the conversation? A. Well, my whole conversation with them was about five, ten minutes. I left the office after that, when they asked for the Promethee.

Q. Did you communicate with Mr. Traa after you left the office? A. Yes. On the 22nd I called Mr. Traa on the telephone and I told him that the receivers rejected the Mary.

Q. Did you hear anything from Mr. Traa after you told him that? A. I understand that Mr. Traa was asked many times by the receivers—by the owners of the Mary, they were making noises—

(94) The Court: This is hearsay. Cut it out.

Q. Just tell us what Mr. Traa told you. A. Well, Mr. Traa told me that the owners of the Mary, they wanted something in writing that the receivers rejected the vessel.

Q. Did Mr. Traa say anything about his communications with Mr. Pettersen? A. Well, I cannot recall after that anything, because when they declined the Mary, then I proceeded to take the Promethee into Jacksonville.

Q. Now, I show you a Telex which has previously been marked in evidence by the plaintiff, dated November 26—

The Court: Exhibit what? What is its number?

Mr. Repetto: Which one are you referring to?

Mr. Taliaferro: November 21, by Mr. Avraamides.

Mr. Repetto: Exhibit 12.

Q. I ask you, Mr. Avraamides, did you send that Telex? A. Yes, I send this Telex out.

Q. And I ask you to whom did you send it? A. I sent it to the main office, Sider, Peru.

Q. Why did you send it? (95) A. I send it because the owners, they were, as I said before, were asking for confirmation about receiver's rejection of the vessel and, since Mr. Molina and Mr. Zegarra told it to us verbally, we didn't have anything in our files to prove that, and I send them this Telex.

Mr. Zegarra, apparently he didn't go back to Peru. He went on vacation to Mexico. He did not return back to his office.

Q. So you were seeking confirmation; is that correct? A. That's correct.

Q. Prior to conferring with Messrs. Molina and Zegarra, had you intended to offer the Promethee to Sider to carry the cargo? A. No.

Q. Why not? A. Because it didn't pay for us to ballast the vessel all the way from Detroit to Jacksonville and send it to Peru, while we could get a very good rate from the Great Lakes at that time for the continent.

Q. Had you investigated the rates at that time? A. Yes. We were in the market prior to chartering—going into the market prior to Mary, and I had many indications and many offers concerning cargos to the (96) continent and Egypt.

Q. Can you give us an example? A. I was offered a grain cargo from Chicago to U.K. at 14 pounds per ton.

Q. Have you made a calculation of the profit you would have earned if you had taken that cargo? A. Yes. I made the calculations and it was a very good profit, over—about $140,000.

Q. Are these the calculations you made, Mr. Avraamides? A. Yes. This is the calculations for the voyage which I turned down.

Q. For the Promethee? A. The Promethee.

Mr. Taliaferro: I want this marked and offer it as defendant's next exhibit in order.

(Pause)

Mr. Repetto: May I ask when this was prepared?

Q. Do you know when you prepared this, Mr. Avraamides? A. Notes were done at that time.

Mr. Repetto: At what time?

The Witness: These calculations, they were prepared afterwards, typewritten for this case, but when (97) we go into the market for a vessel and they give us an indication, we have to calculate whether we can make a profit or a loss at that time.

Mr. Repetto: Were these based on notes made on November 20? The document is headed "Chicago/Avenmouth, offer not pursued, November 20, 1974."

The Witness: That's correct.

Mr. Repetto: You turned this offer down on November 20?

The Witness: I did not turn the offer down. I did not counteroffer the offer because we had in mind the Promethee as we chartered the Mary subject to receiver's approval, because if the receivers were rejecting the Mary we did not have any ship to replace it. And the Promethee was a standby.

Mr. Repetto: I want to know the date you received this offer. Is it November 20? That's what the document says.

The Witness: Well—

Mr. Repetto: It says "Offer not pursued November 20, 1974."

Is that correct?

The Witness: Yes.

* * *

(98) Q. Now, after the vessel arrived in Chimbote, did you attempt to obtain a cargo out of Chimbote? A. Yes, we attempted to get cargo out of Chimbote or out of any of the ports in west South America, and it didn't pay to employ the ship. For us, it was much more profitable to send the ship in ballast into the Gulf or east coast United States.

Q. Where did you send the ship? A. We sent it in ballast without employment. She passed the Panama Canal and then finally we fix her for a cargo in Port Everglades to Alexandria.

Q. How much did it cost to bring the Promethee back in ballast to Port Everglades? (99) A. $62,385.

Q. How does that affect the per metric ton of this cost for the voyage? A. $32.96. That's the cost of taking the vessel from Detroit to Port Everglades via Jacksonville and Chimbote.

Q. Now, when did the Promethee actually arrive in Jacksonville? A. December 4, I think. I have to check.

I cannot recall that exactly. The first week of December.

Q. Did you encounter any inclement weather proceeding to Jacksonville? A. Yes. She was delayed about four five days into the seaway, bad weather.

> Mr. Repetto: I object, your Honor, to the assertion that it was bad weather. That is hearsay unless he was on board the vessel at the time.

The Witness: The ship sailed from Detroit on November 23 and the sailing time from Detroit to Montreal is usually 2-1/2 days. It took the ship about five days to reach Montreal.

The Court: Maybe the ship broke down.

The Witness: No. We have logs of the vessel (100) of bad weather.

The Court: Where are they?

Objection sustained.

* * *

(102) Q. Mr. Avraamides, have you prepared an analysis of income and expenses for the Mary if Tidewater had chartered her? A. Yes.

Q. And are your calculations on this document typical—

The Court: May the Court have one so that I know what you are talking about?

Mr. Taliaferro: Certainly, your Honor.

The Court: Mark it Defendant's Exhibit F.

(Defendant's Exhibit F was marked for identification.)

Q. Mr. Avraamides, do these calculations represent a typical method in the shipping business for calculating voyage income and expenses? A. Yes.

Q. What did you determine the total income for the Mary as if she had performed the voyage to Chimbote? A. Her income, less commissions, will be $263,935.55.

(103) Her expenses would have been $310,996.00.

Q. What was the net result? A. Net loss of $47,060.45.

* * *

(105) Q. Now, what does the charter party have to say, if anything, about Saturdays and Sundays? A. From Saturday noon until 8:00 o'clock on Monday, and from noon—midnight preceding a holiday until 8:00 o'clock the next day does not count even if used.

Q. You are referring again to the language in the *pro forma* Genjapscrap charter party form? A. Yes.

* * *

(107) Q. Mr. Avraamides, under date of December 24, 1974, you have 12 hours of consumed lay time.

Why was there only 12 hours there the day before Christmas? A. It was a legal holiday from noon.

Q. From noon? A. Yes.

* * *

(108) Q. Now, Mr. Avraamides, I direct your attention to an item under No. 4, "Port Charges."

I wonder if you could explain to use the port charges for Jacksonville. A. $6,500. That's the amount it cost us for the M/V Promethee.

Q. At Jacksonville? A. Yes.

Q. What do you have for the cost— A. Excuse me. Something else.

This is based on 6,500 on a ship that is only 10,000 tons, while the Mary was a much bigger vessel which no doubt would have been much more.

(109) Q. I see. A. Than what I estimate here.

Q. All right.

You estimate 6,500, though; right? A. Yes.

Q. But that was based on— A. This is actual disbursements of the Promethee at Jacksonville, Panama Canal and Chimbote. Panama Canal, 6,500.

Q. And Chimbote? A. 3,400.

Q. Also based on actual disbursements? A. Actual disbursements.

* * *

(110) Did you estimate an expense that would have been incurred for a voyage in ballast if the Mary had been unable to obtain a cargo? A. Yes.

Returning into the Gulf would have been $63,000.

Q. That's item No. 5? A. Yes.

Mr. Taliaferro: I would like to offer this in evidence.

Mr. Repetto: I object.

The Court: I will take it for what it's worth.

(Defendant's Exhibit F was received in evidence.)

Mr. Taliaferro: Your witness.

* * *

(111) *Cross Examination by Mr. Repetto:*

* * *

Q. Now, I would like to direct your attention to (112) your conversations with the two gentlemen from Sider in your office in New York.

You say that you are not sure whether they took place on November 21 or 22; is that right? A. No—yes, that's correct. I'm not sure.

Q. Did you have any conversations with Mr. Traa on November 21? A. Yes, I had a conversation in the morning.

Q. Did you have a conversation with him about the time for the charterer's approval—receiver's approval that was in his Telex to you of November 20? A. He called and asked me whether I had receiver's approval. I said no, that I don't have it.

Q. Did you then agree to have a 24-hour extension? A. I agreed to a 24-hour extension.

Q. Would it indicate to you that then, as of the 21st, you had not spoken with these people and your conversations were on the 22nd? A. I said my conversation with Mr. Traa was in the morning.

Q. Did you only speak with him once that day? A. I speak to him many times during the day because I have other vessels to fix and other cargos to ship (113) besides the Chimbote cargo.

Q. But your conversation about receiver's approval was in the morning? A. It was in the morning.

Q. You are sure of that? A. I'm positive.

Q. Did you have any other conversations with Mr. Traa on the 21st relating to the Mary? A. No.

Q. But you agreed at that time to an extension? A. Only I spoke to Mr. Traa about the Mary when these representatives declined the Mary, which was on the 22nd.

Q. What was on the 22nd? A. When I spoke to Mr. Traa declining the Mary.

Q. What time of day on the 22nd was that? A. I cannot recall the time. It was three years ago.

Q. Was it morning or afternoon? Was it in the morning or the afternoon, do you remember? A. I believe it was around noontime on the 22nd.

Q. Now, you stated in your conversation with Mr. Molina that he said he rejected the Mary because of age; is that right? (114) A. I assumed that he rejected it because of age.

Q. You testified on direct that he did. A. I gave him the details of the vessel, I gave him the lay days which was constituting December 9, and he didn't want that ship.

He asked us whether we have another ship earlier.

Mr. Waisfisz said that he has a ship open in Detroit very soon and you could make it on November 30, end of November.

Q. Did you give him an ETA for the Promethee? A. We told him end of November.

Q. Did you tell him what the Mary's reported ETA was? A. The Mary's lay days, the ETA from the owners has nothing to do with it. The lay days states November 27, December 9.

The ship could arrive in Jacksonville without penalty December 9.

Q. That's right.

But did you tell them what the Mary's ETA was? A. No, I didn't. I told them the lay days.

Q. The lay days were from November 27 to December 9, as per the Telex of November 20? (115) A. Yes, because usually a ship never arrives the first day of the lay days.

Q. But that's the information you had at the time? A. I had to give him the lay days.

Q. And the information you had available was an ETA of November 28, lay days November 27, December 9? A. ETA November 27 is without guarantee.

Q. Of course, it is an estimated time of arrival. A. That is the first day of the lay days.

Q. I'm not arguing with you. That's what you had and is that what you told him? A. I couldn't tell him ETA November 28.

Q. Why not? A. Because this is not a guarantee from the owners.

What about if the ship was arriving December 8? I would have been a liar to the representatives.

Q. Did you give him an ETA on the Promethee? A. No. We said end of November.

Q. End of November.

And that's why he picked the Promethee? A. From that or from the age of the vessel. On (116) the Promethee there was no extra insurance.

Q. Did he mention the age of the vessel to you, Mr. Molina? A. I had the right to tell him all the details of the vessel.

Q. And did you? A. I mentioned to him the age of the vessel.

Q. Did you mention to him, under the proposed charter, the overage insurance premium payment would be paid by the owner? A. I didn't mention to him that because we didn't reach the negotiations with the owners for that cause yet.

Q. Did you have any conversations—

The Court: Is that clause in the Genjapscrap form?

Mr. Repetto: It is, your Honor. Exhibit 4.

The Witness: Excuse me, your Honor, but usually this clause is never accepted by the owners and we never reach negotiations for that clause yet.

Q. Did you speak with Mr. Traa about the Mary in the afternoon of the 21st? Did he tell you about his negotiations in the terms of the Atlantic Freedom charter? A. We have not discussed any negotiations of (117) terms or any other charter party.

Q. Mr. Traa was your broker? A. Yes.

Q. And you authorized him to charter and negotiate for ships on your behalf, did you not? A. I authorize him to go into the market, not to fix on my behalf.

Q. Well, you received a Telex from him on the 20th, which is Plaintiff's Exhibit 3, did you not? Did you receive this Telex? A. I received this Telex.

However, this does not form a fixture or a charter party. There was no charter party.

Q. The word saying, "We confirm having fixed today as follows account Tidewater," do not mean in the chartering business there is a fixture? A. Would you please also read the last paragraph?

Q. "Sub receiver's approval latest 1600 hours, November 21." A. What else?

Q. "Otherwise Genjapscrap sub-details." A. Otherwise they have to be negotiated.

Q. Every one of them? A. Every one of them.

(118) Q. After your conversation with Mr. Molina, you decided upon the Promethee; is that right? A. Certainly. After I was given the go-ahead.

Q. And the charter party was prepared for that vessel between Tidewater Terminals and Steelmet Export Company? A. Charter party is just a form of bookkeeping, internal bookkeeping.

Q. Was a charter party prepared? A. It was prepared.

Q. Was it signed by both the parties? A. What parties?

Q. Tidewater Terminals, Inc. and Steelmet Export Company. A. Yes.

Q. I show you a page of the charter party previously marked as Plaintiff's Exhibit 11.

Do you recognize the signatures on that charter party? A. Yes.

Q. Who signed it for Tidewater Terminals, Inc.? A. Walter Vincent.

Q. Who is that? A. He is our superintendent.

(119) Q. And who signed it on behalf of Steelmet Export Corporation? A. Myself.

Q. That is your signature on the charter party? A. Yes.

Q. I direct your attention to the first page of the charter party, line 6, which describes the vessel and says, "And expected ready to unload under this charter about November 28, 1974."

Is that correct? A. Ye

Q. Who put that informa ito the charter? A. We put the information into the charter.

Q. Who is "we"? A. My office. Both companies is the same company.

Q. I know both offices are the same company. A. This is not an official charter party, your Honor. This is for bookkeeping purposes between two subsidiary companies which is in the same office, the same company.

Q. Did not the letter of credit with Sider, Peru, call for charter party bill of lading? A. Yes.

Q. Did those bills of lading refer to a certain (120) charter party dated November 22, 1974? A. That's why we have to prepare a charter party because we have a charter party bill of lading.

Q. In it you said, "ETA expected to unload under this charter party November 28." A. That's correct.

Q. When was this charter party dated November 22 prepared, on the 22nd? A. It says on the top.

Q. Where was the Promethee on November 22? A. She was in Detroit.

Q. Was she still discharging? A. No. She arrived on the 22nd or 23rd and she sailed the same day. I cannot recall it exactly.

* * *

(124) Q. The point is that the total mileage from Detroit to Jacksonville is approximately 2,725 statute miles —pardon me, nautical miles, and a 15-knot vessel, given the best of all weather and no congestion, would take 7.3 days to do it. A. That's correct.

Q. So that, sailing on November 23, her absolute earliest arrival would be November 30, not November 28; is that correct? A. That's correct.

Q. When you add on the time for coming through the canals and all, this 7-day period which is a theoretical mileage divided by speed, really you are talking a longer period; isn't that true? (125) A. No. That's not much longer; maybe a few hours.

Q. But you would agree with me at least 7 days? A. 7 days, yes, I agree.

Q. I refer you to Plaintiff's Exhibit 12, which is a Telex that you stated in your examination you dictated to Sider, Peru, on November 26. A. That's correct.

Q. Now, the Telex says, "Please be advised that we are negotiating to two (2) ships. A, M/V Mary"—you gave her details.

You stated in this Telex, "Ready to start loading Jacksonville approximately December 8, 1974."

Where did you receive that information about the Mary? A. That was based on the lay days and based on rumors that the ship was going for drydocking.

Q. Where did you receive these rumors? A. All over the place you can hear rumors.

Q. From whom? A. Various ship brokers.

Q. On what days did you receive them? A. That was prior to November 20.

Q. You heard this prior to November 20? A. Yes.

(126) Q. Where on November 26 did you get to the December 8 date that you gave as the Mary's ETA? A. On November 26 I had to send them to the buyers a Telex confirming my conversation with the two representatives, and I asked them to confirm in writing the rejection of the Mary.

Q. You state here that on the 26th we are negotiating two ships, and you signed a charter for the Promethee on the 22nd. A. Maybe it's my English.

We negotiated two ships and I make a gramatical mistake.

Q. You state here in B, where you describe the Promethee, that "this vessel is ready to start loading Jacksonville November 29/30, 1974." A. Yes, that's correct. That's why you estimating it yourself, November 30.

Q. On the Mary, you described her ready to load as approximately December 8; is that correct? A. That's correct.

Q. On the next day you sent another Telex to Sider, Peru, did you not? This is marked as Plaintiff's Exhibit 13.

Would you review it and tell me whether or not (127) you sent that Telex?

(Pause.)

A. Yes.

Q. You did send that Telex? A. Yes.

Q. And you state in this Telex, "Please urgently advise your confirmation of acceptance M/V Promethee as we must close negotiation with owners STOP Very important you answer us today in order to avoid late shipment."

That's what you said? A. Yes. I had to have it in writing. I had to press them for that.

Q. You were negotiating with the owners of the Promethee on the 27th of November? A. I had to tell them I was negotiating with somebody to tell them that it was in writing. I want to have it in writing.

All I had was a verbal conversation with their president. I had nothing else to prove to the owners that the vessel was rejected.

Q. Did you receive a reply to those two Telexes? A. Yes, I received a reply.

Q. I hand you what has been marked as Plaintiff's (128) Exhibit 14 and ask if you can identify it. A. Yes, that's correct.

Q. That is the reply you received? A. Yes.

Q. And it's in Spanish; is that right? A. Yes.

Q. Did you cause a translation to be made? A. Yes.

Q. Is this, Bertrand Languages, Inc., what you had made? A. Yes.

Q. That is how you found out what they were saying; is that right? A. Yes.

Q. It says, "We advise you that the purchase of 10,000 short tons of scrap was made CAF terms and therefore we cannot decide on vessels which will carry the material." A. Apparently the two representatives did not reach Peru by that time.

Q. Where did you direct your Telex messages? A. To the head office in Lima.

Q. To the head office in Lima.

Did you not direct them to Chimbote? (129) A. I cannot recall that. I send it to Chimbote or Lima, but I can't recall it.

Q. Do you know whether Sider, Peru has more than one Telex number? A. I don't know that.

Q. Do you know who replied to you? A. No.

Q. The charter party dated November 22 that was prepared between Tidewater and Steelmet Export calls for freight rate; does it not? A. For bookkeeping purposes.

Q. What was the amount of that freight rate? A. $38 a ton.

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(130) Q. This letter of credit requires separate invoices for freight as one of the documents to be produced? A. No. We have to state the freight on the invoice according to the regulations of the Government of Peru.

Q. You have to state the freight rate? A. Whatever freight we wish to put on it.

Q. I refer to Exhibit 18 which has been identified as your invoice to Sider, Peru. A. Yes, this is correct.

Q. That shows the freight is $38 a ton, doesn't it? (131) A. That's the regulations of the Consul of Peru to put a freight rate on the invoice.

Q. That invoice was paid? A. Yes.

Q. Does Steelmet pay $38 a ton freight rate to Tidewater pursuant to the charter party of November 8, 1974? A. No. It was a bookkeeping transfer.

Q. You did not advise Mr. Molina of the terms of the Genjapscrap charter; is that right? A. I gave him the main features.

As I said before, when the vessel was built, the lay days, and I didn't have to tell him what was the freight or anything else because it was not his business to know.

Q. But you didn't mention the overage insurance feature to him? A. Of course I mentioned it.

Q. Did you mention the clause from the charter? A. I couldn't mention that because I had never reached negotiations with the owners at that point. That was—

The Court: Is this correct, "we never reached the negotiations with the owners"? The impression you gave (132) me on direct is you told him about the insurance and the implication left with me is that it was going to be an additional cost to him.

This is why you are being asked this on cross-examination.

The Witness: I mentioned to him the penalty, there was a penalty.

Q. But did you also mention—

The Court: Did you tell him that it wouldn't be his cost, that it would be the owner's cost?

The Witness: No, I didn't tell him that because I didn't know the owner would have paid it at the time.

* * *

Re-direct Examination by Mr. Taliaferro:

Q. Under the terms of the Genjapscrap charter party form, isn't the insurance overage premium one of the items that is subject to negotiation? A. Yes.

The Court: Of course it is, but he never told that to his client.

Q. Mr. Avraamides—

The Court: He left an impression with the (133) client this was going to be the client's cost. That's the way I interpret his direct.

Q. Was there any commitment from the owner that he would pay it? A. No.

The Court: Except the charter party provided it as of the time of the conversation.

Q. And wasn't that one of the details that would be negotiated under the terms? A. Yes, one of the details.

The Court: But he never told him that was open for negotiation.

* * *

Re-cross Examination by Mr. Repetto:

* * *

(135) Q. And you testified that the Promethee arrived in Jacksonville on December 4 and sailed December 8? A. That's correct.

Q. What time on December 8 did it sail? A. I don't have it here.

Q. Midnight, midday, middle morning? A. I don't have it here. I don't have the statement of facts with me. But December 8.

Q. I have never seen the statement of facts. A. December 8.

Q. You show she arrived December 4 and, according to your exhibit, that was a Wednesday? A. That's correct.

Q. Was she loading on December 5? A. I was in Jacksonville.

Let me explain. She was loading, yes.

Q. Was she loading on December 6? A. Yes.

Q. On December 7? A. Yes.

Q. On December 8? A. Yes.

Q. December 8 was a Sunday, was it not? (136) A. I was the shipper, I was the charterer and I was the stevedore. I had the right to work any time I wanted, Sundays and holidays, in order to expedite my vessel.

Q. And you worked that ship on the weekend? A. That's correct.

Q. Have you ever worked anyone else's ship on a weekend? A. No. We never work—when we charter vessels we never work the vessels overtime except ours.

Q. Do you work other vessels overtime if the owner agrees to pay it? A. Up to this point, I have been three years with this company, I have never had an owner approach me to work overtime.

Q. You have projected a loading time for the Mary from November 28 to December 5, which is eight days. A. That's correct.

Q. Yet the Promethee loaded approximately the same cargo in four days. A. The Promethee was my vessel and the Mary was not. I didn't have any reason why I should work Saturdays, Sundays and holidays on the Mary in order for the owner to save money.

(137) Q. If the Mary tendered on Monday, December 2, could she not have loaded in four straight days, working days? A. Yes, that's correct. It could do that.

Q. So it should have been there four days? A. Provided she was arriving on Monday or Tuesday.

Q. That's right. A. One one day of the week. If she was arriving another day you will hit the weekend.

The only day to avoid all these days is Monday. If the vessel arrives on Tuesday, any day of the week, it will hit a weekend.

Q. But it could arrive late on Sunday night, tender and start on Monday.

So, isn't it true you have taken to paragraph C-1 of this every slowest way the vessel could load? A. No. That was according to the owner's indication that the vessel was to have arrived there on November 28.

Q. But you said no ship ever arrives on the first day of its lay days. A. I had to take an ETA.

The Court: Wait a second.

You are taking the ETA for this but you didn't (138) tell the Peruvians that the vessel arrived on that day.

The Witness: This is basic calculations.

> Mr. Repetto: He told the Peruvians in the Telex that it would be arriving December 8, which would be a Sunday. We don't know when it would have actually arrived because the voyage ended before it.

Q. Now, on section 2 of this you show the vessel arriving December 17 and getting out January 7, whereas the Promethee arrived December 1, you have testified, and got out—January 7, I'm sorry.

Why do you ascribe four extra days discharge to the Mary over what Prometheee apparently performed at? A. Because the Mary would have hit more holidays.

Q. But you have here arriving on December 17 and Promethee, you said, arrived on a Saturday, December 21, but you show both of them, their demurrage ending the same time.

I don't understand where, between December 17 and 21, you picked up four holidays. A. I didn't pick up four holidays. I hit a weekend which the Promethee couldn't hit.

Q. But if the Mary arrived there December 11 or December 19, the only different date, wouldn't all this calculation go out? (139) A. It could make a difference of three days easily.

Q. You also show she was there four days longer than Promethee on your testimony. A. Yes.

Q. I would like to know why you have the four days extra. You have her arriving before Promethee on a nonholiday and still being there through the Promethee.

I would like to know what the basis is. A. My calculation is based on how many days is allowed and, on the basis of the vessels arriving there, how many days she is going to spend in Chimbote before she goes on demurrage.

In that case it was 21 days, 8 hours, 49 minutes.

Q. All this shows is the allowable lay time open at Chimbote and not necessarily the actual discharging time. A. Well, the actual discharge for the Promethee happens to be three or four days below from this calculation, but, as I said, it could hit an extra weekend, the Mary.

This is based on the arrival time that you gave us in Jacksonville and the steaming time to Chimbote. (140) This is calculated—

Q. I am not talking about steaming time.

Still you have a vessel discharging the same amount of cargo, but you are giving it four more days, and I'm trying to figure out why. A. It can happen.

Q. But it didn't happen to the Promethee. A. Because the vessel arrived on a different date.

Q. Arrived the 21st, Saturday. A. What were my calculations on the ship?

Q. I don't know what they are. A. You have it in front of you. She arrived on December 17.

Q. You have time not counting.

Do you know whether they worked on these days? How many days did the Promethee work? A. They were working 24 hours, Sundays and holidays, in order to match the 800 tons per day. They couldn't do 800 tons per day and they were working holidays and Sundays.

Q. They did work them all? A. They did work them all.

Q. On page 3 of this calculation under item 5 you have a return expense of 63,000. That's based on the (141) assumption that the vessel returned in ballast? A. That's correct.

Q. To where? A. To the Gulf, U. S. Gulf.

Q. Where in the U. S. Gulf? A. I would say New Orleans.

Q. The Promethee loaded at Port Everglades, you said, going out? A. Yes.

Q. What cargo? A. She was on voyage charter to Egyptians.

Q. What was the cargo? A. Scrap.

Q. Who was the supplier of the scrap? A. Automotive Disposals Corporation.

Q. Did Steelmet have anything to do with that movement? A. Yes. Steelmet—we were partners at the time.

Q. So she was carrying in part Steelmet cargo? A. Yes. But the fixture was done on a voyage charter basis.

Q. Who was the charterer? A. The receivers of the cargo in Cairo and the (142) vessel was chartered by the Arabs.

Q. Did Steelmet charter vessels in its own name? A. Yes.

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How many vessels like Promethee on time charter for a relatively long period did you have on November 20, 1974? A. At that time I had only the Promethee.

Q. That was your only time charter? A. And presently I have three.

(143) Q. But, as of November '74, you had no other vessels like that? A. I had no other vessel.

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(144) IVAR TRAA, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. Taliaferro:

* * *

(145) Q. Would you describe those negotiations for us? A. Well, they started. I would say, late morning on November 20, with offers and counteroffers, and we reached the tentative stage by, I would say, late afternoon.

The Court: When you say what, reached a tentative—

The Witness: Sub-details, sub-receiver's approval. What is sent in the Telex I sent out the same day.

Q. Sub-details means subject to? A. Subject to the charter party terms and details.

Q. Which charter party were you referring to, if any? A. We were basing this on a Genjapscrap form.

Q. Was there another condition? You mentioned that it was subject to the Genjapscrap details, and I think you mentioned another condition. (146) A. It was subject to receiver's approval of the vessel.

Q. In your experience, have you known negotiations to fail because the parties have been unable to agree on charter party details? A. Yes.

Q. Have you encountered that situation with respect to the details of the Genjapscrap charter party form? A. Yes.

Q. On or about November 20, did you send a Telex to Mr. Avraamides reporting the progress of the negotiations? A. Yes.

Q. Did you send a copy of that also to Mr. Pettersen? A. Yes.

Q. Before you sent out that Telex, or sometime during the day of November 20, had you conferred with Mr. Avraamides about the progress of the negotiations? A. Yes. I mean, we were in contact back and forth all day. All what is set out in the Telex was all agreed to on the phone.

He was aware of the agreement so far. This confirmation Telex I see here, it's timed at 1925. In (147) other words, they had left the office. That was basically to confirm what had been agreed up to that.

Q. And on the 20th, did Mr. Avraamides make any mention of the receivers? A. Well, after we had agreed up to what is confirmed here. He said, "Okay, fine, now I go out and get the receiver's approval."

Q. What did you hear next from Mr. Avraamides? A. It was the next day. I presume it must have been before lunch.

Q. Which day are you talking about? A. That would be the 21st of November.

Then he said he didn't have the receiver's approval yet. Then we talked back and forth, and I said that maybe we can get an extension on this.

He said, "Yes, I would agree to an extension if the owners would agree to an extension.

So I went to Pettersen and he agreed to an extension until the next day.

Q. What happened the next day? A. The next day Andrew told me he didn't get the receiver's approval, which I told Pettersen.

He asked me what the reason was, and I explained to him at the time that I didn't know the reason, but did not (148) get the receiver's approval.

Q. What day did you tell Mr. Pettersen this? A. On the 22nd.

The Court: Wait a second.

You say on November 22, Mr. Avraamides told you in the morning that he hadn't received the receiver's approval?

The Witness: He didn't get it.

What I took to me that the ship was refused or rejected. I can't recall whether it was in the morning or in the afternoon. It was on the 22nd.

The Court: You are saying he didn't tell you why?

The Witness: No, he didn't give me the reason why.

The Court: And you say that you called Pettersen?

The Witness: I called Pettersen and told him the same.

The Court: Go ahead.

Q. Did you confer the following week with Mr. Pettersen? A. Yes, I think I conferred for three or four days thereafter.

Pettersen wanted to know the reason why the (149) ship had been turned down, and I think it was Monday or Tuesday the following week.

Q. That would have been the 25th or the 26th? A. Yes. I can't recall now what Avraamides had told me, but I recall I said to Pettersen I think it had something to do with the age. That's all I can recall.

Q. Did Mr. Pettersen take a position with respect to Tidewater chartering the vessel? A. I'm sorry?

Q. Did he have anything to say? A. Well, he was rather upset.

Q. Now, I show you the analysis that Mr. Avraamides made for a hypothetical voyage of the Mary from Chimbote to Jacksonville.

Do you have a copy before you? A. Yes.

The Court: I don't.

Mr. Repetto: It has been marked as F, your Honor.

The Court: This is not Pettersen. This is what Mr. Avraamides made.

Mr. Taliaferro: Yes, sir.

The Court: You said Pettersen.

Mr. Taliaferro: I apologize.

(150) Q. Have you reviewed this? A. Yes, I have reviewed it.

Q. And can you tell whether, in your opinion, these calculations were prepared in accordance with generally accepted methods of voyage accounting? A. Yes.

Q. And do you disagree in any major respects with his calculations? A. No.

The Court: The only problem here is the date when you start.

This vessel could have arrived on Sunday and come out the same time, couldn't it?

Mr. Taliaferro: He selected—

The Court: You selected. He didn't select, because your witness said he didn't tell the people from Peru that this vessel was going to show up until December 8.

Mr. Taliaferro: No, but for purposes of this calculation—

The Court: I know for purposes of this calculation, but they are inconsistent. The witness talks out of both sides of his mouth.

I am pointing out to you that if you calculated (151) this that the ship arrived on December 1, not November 28, which is closer to the date that your witness claims he told the Peruvian people the vessel would arrive, it would be out the same time.

Mr. Taliaferro: Yes, your Honor, but there still would have been weekends, in terms of the Genjapscrap charter form, would still be applicable.

The Court: Not if it arrived on Sunday, December 1, or Monday, December 2.

Mr. Taliaferro: That's true, if it arrived on Monday.

The Court: That's what I am talking about. you can't have it both ways. You can't say "I didn't tell them it wasn't going to arrive on November 28, because I thought it wasn't going to arrive," says your witness, "until December 8. But if I want to figure out what it would have cost these people, I will take November 28 because that looks good."

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(152) Q. Mr. Traa, I direct your attention to the number of days from St. Croix to Jacksonville. (153) A. Yes.

Q. Do you see four days? A. It's overly optimistic. 1,194 miles, and I was told the ship is doing 11 knots. That would mean 4-1/2 days, under ideal weather conditions. I don't know what the weather was or would have been at the time, but a minimum of 4-1/2 days if she was doing 11 knots.

Q. How about the five days figure, Jacksonville to Cristobal? A. There again it's 1,516 miles at 11 knots. That should come to 5 days, 18 hours. Also provided it's ideal weather conditions.

Q. And Balboa to Chimbote, four days. A. That's 1,163 miles, which on 11 knots comes to 4 days and 12 hours.

Q. And I direct your attention to the figure of eleven days discharging at Chimbote. A. Well, they can't have taken any—given any consideration for the holidays, Saturday afternoons, Sundays. Or if this is a precalculation, there is no reserve there for bad weather.

Q. When you say "consideration" there, are you referring to the provisions of the Genjapscrap form? A. Yes.

(154) Q. And can you tell us what that would mean in dollars and cents to the plaintiff?

The Court: What would mean in dollars and cents?

The Witness: I mean it would mean, for every day it would mean $4,200 in hire plus his bunker cost—

The Court: Is the bunker cost correct in here?

The Witness: I'm assuming that the costs given here—the number of tons and the prices are the actual prices. So you have 7 tons at $75, which would be almost $500 a day, approximately. So that means $4,700 a day which would have to be added on for all these Sundays, holidays.

The Court: When you say "all these Sundays," how many, one? What holidays?

The Witness: Eleven days, that means—

The Court: Could be one Sunday, couldn't it?

The Witness: Yes. If you are lucky, it could mean one weekend. Probably it would mean two weekends.

Q. If it means one weekend, under the terms of the Genjapscrap, what would be the economic effect of that? A. That would be a day and a half; I mean from Saturday noon. It would be 1-3/4 days. Until Monday morning. (155) Q. At what time? A. 8:00 o'clock. Which would mean 4,200, 4,700, about $8,000. I mean this is quickly from my head.

Q. And if it should happen over two weekends? A. That would be the double amount.

Q. And under the terms of the Genjapscrap charter party form, when a vessel arrives, does lay time commence immediately? A. No. It commences the next following working day after notice is given, at 8:00 o'clock in the morning.

Q. At 8:00 o'clock.

So what does that mean in terms of dollars and cents to the owner of the vessel? A. If the vessel arrives at 8:00 o'clock one morning and she gives notice that day, that means the time would start counting from the next morning at 8:00 o'clock, which means 24 hours, which would mean in this case here, if you take the hire plus bunker, which would be about $4,700.

The Court: If it arrived at noon?

The Witness: If it arrived at noon, it would be less. If it arrived at 3:00 o'clock in the morning, it would be more.

Q. And if a holiday should intervene during a (156) period of eleven days, how would that operate under the terms of the Genjapscrap form? A. Holidays does not count. So, in other words, one would have to add on an extra day.

Q. What do you mean, holidays do not count? A. Under the lay time it's excluded.

Q. From what time to what time? A. From midnight until, let me see now, midnight to midnight, I believe.

Q. Would it refresh your recollection if I were to suggest it's 8:00 a.m. after a holiday in the Genjapscrap form? A. I don't think I have a copy of that.

Q. I hand it to you.

(Pause)

A. I'm sorry. It's from midnight preceding a holiday until 8:00 a.m. the next day after the holiday. So, in other words, it would be one day and eight hours that would not count and would have to be added to the lay time.

Q. It would not count as lay time? A. As lay time, no.

Q. And what if the vessel were to arrive on a holiday, how did that affect the tendering of legal notice (157) of readiness under the terms of the charter party? A. A vessel could not tender notice of readiness on a holiday. It has to be done during business hours. So if a vessel arrives on a holiday, she can only tender notice of readiness the next day, and the time will be 8:00 o'clock the following morning. In other words, if Monday is a holiday, and the vessel arrives on Monday and tenders notice of readiness on Tuesday, the time would start 8:00 o'clock the morning of Wednesday.

Q. Can you tell us the provision of the Genjapscrap from that so provides? A. Yes. It says here:

"At first load point in discharge point, time to count 8:00 a.m. first working day after due notice given, whether in berth or not. Notice of readiness to be given in writing within office hours."

Q. During October and November, did you have any conversations with Mr. Avraamides about a possible charter for the Promethee out of the Great Lakes? A. Well, I had many conversations with him during October and November about the Promethee. We knew she was going to be open in the Lakes.

The Court: It was already under time charter to these defendants, was it not?

(158) A. Yes, but not to do anything on her until he had covered his Chimbote; that he said he had to keep the Promethee up his sleeve as a reserve for the Chimbote.

Q. Can you describe the market situation generally in the Great Lakes area towards the end of November 1974? A. Well, '74, same as any year, it's a flurry of activity. It starts the end of October, November. Everybody wants to get their cargos out before the freezeup.

* * *

Q. And how would that have affected the Promethee, if at all? A. Oh, she was in an excellent position to get a good paying cargo out of there.

The Court: She was what?

The Witness: Excellent position to get a good (159) paying cargo out of the Lakes.

In other words, to get a bit of premium over the normal market rates that would be paid from the USA to the UK Atlantic.

* * *

Q. Did you receive any solicitations for cargos suitable for the Promethee? A. Yes. We were daily sort of watching the market and we had the ship well covered around, and we also received indications and offers on the vessel.

Q. Did you receive any firm offer? (160) A. Yes.

Q. When was that? A. The first one was, if I can recall, that I have notes on, was on October 29. We had an offer in the morning on 10,000 tons of sulphur from Thunder Bay—that's up in the lake head—to Alexandria, Egypt, where they offered a firm $41.

We declined them because Avraamides wouldn't let me fix the ship at the time.

The same afternoon, they came back and offered us $42, and he still declined it.

Q. Have you made any rough calculations with respect to profit the Promethee would have earned if she had accepted that cargo? A. Yes, I have. It's a very rough calculation. It shows a profit of between 90 and 100 thousand dollars.

The Court: How much?

The Witness: Between 90 and 100 thousand dollars.

Q. Did you receive any solicitations with respect to a grain cargo? A. Well, there was a grain cargo from Chicago to Avenmouth.

Q. To Avenmouth? (161) A. Yes, I believe it was Avenmouth, in U. K.

Q. Did Avraamides tell you to pursue that offer? A. Well, he told me to keep the charterers interested in the ship by giving them indications, but not to offer the ship firm.

The charterers were there to bid the ship but we weren't ready to trade at the moment.

* * *

Cross Examination by Mr. Repetto:

* * *

Q. I believe you stated that you were negotiating the Mary on the basis of a Genjapscrap, is that right, under Mr. Avraamides' instructions? A. We were to use the Genjapscrap as a basis, as a *pro forma.*

Q. And it was sub-details of a Genjapscrap? A. Yes.

Q. Did you not mention a particular Genjapscrap to Mr. Pettersen? A. Not at the time we made the initial agreement, but I think we checked on the files and we found one that (162) I had a copy of and that Avraamides had a copy of.

Q. Was that the Atlantic Freedom charter party of November '72? A. I believe it was. I can't recall the name right now, but I believe it was the one.

Q. And did you not advise Mr. Pettersen that he could get a copy of it from Mr. Avraamides? A. That's right.

Q. And the next day did you not discuss the terms of that Genjapscrap with Mr. Pettersen? A. No, we didn't get into the details at all because we were trying to get this sub-receiver's approval sorted out.

Q. On November 21, the day after you sent your Telex, didn't you discuss the details of the Atlantic Freedom Genjapscrap charter with Mr. Pettersen? A. No, because I think he only got it late in the afternoon, if I am not mistaken.

Q. You mentioned that you had worked for several companies prior to Antra Ship, Scandia, and all that.

Were you with them as a chartering broker? A. Scandia, the first six months I was more agency, but after that it was all chartering.

Q. And your other employment subsequent to Scandia, (163) you have done nothing but charter? A. That's right.

Q. What does the word "fixed" mean in the chartering field? A. It's a fixture.

Q. Would you describe a fixture, please? A. It's an agreement, a contract.

Q. A fixture is a contract? A. Yes.

Q. And we confirm having fixed, and that means we confirm having made a contract? A. Subject to certain terms to be negotiated later on or to be agreed upon.

Q. And in this case what were those terms, referring to your Telex of November 20? A. Those were agreeing to the terms of the Genjapscrap.

* * *

(164) Q. Did you draft them yourself? A. Yes.

Q. And—

The Court: Let me have one of them, please; either one.

Q. You drafted them yourself? A. Yes.

Q. Based on your telephone conversations with Mr. Pettersen and with Mr. Avraamides; is that right? A. That's right.

Q. This wasn't drafted by a clerk in your office; I mean, this is your draft? A. No, it was me because it was done late.

* * *

(166) Q. Now, what does lay time mean? A. Lay time is the time allocated—let's say the free time allocated for loading or discharging.

Q. Before demurrage is incurred? A. Before demurrage.

Q. And you referred there that weekends would not count as lay time. A. That's right.

Q. So that if the vessel had eleven days—pardon me, the receiver was allowed eleven days to discharge and

nine had gone by and you would come up onto a weekend, he could still use that eleven and he wouldn't be on demurrage? A. That's right.

Q. If Saturday was the eleventh day and he didn't finish, he could unload and he would not incur any demurrage; is that right? A. That's right.

Q. How does it refer to a time that a vessel spends (167) in port? Is there any real relation between allowed lay time, exclusions from lay time, and the actual calendar time that a vessel stays in port? A. There is no direct relation to it.

The charter party, in this case a Genjapscrap, or any other party, stipulates how the time is to be counted.

Now, if for argument's sake, you had four holidays in a row, like you have in Japan—

The Court: We didn't have it here. Don't give me hypotheticals and lead me down another garden path.

Q. Let's assume one holiday. But the receivers elected to work the vessel.

The vessel would not be delayed in port then, would it? A. No.

Q. And the work would have been done? A. Yes.

Q. It would merely not collect demurrage if they had gone beyond the allowed lay time? A. That's right.

Q. But, as far as its days spent in port, these additions and deductions to lay time, are theoretical and relate to money and not time actually spent; isn't that (168) true? A. Well, if they work overtime on the weekend, then the ship would have to pay out dispatch money, most likely.

Q. But it would have physically completed loading and spent so many days in the port, calendar days? A. Yes.

* * *

Q. Did you hear Mr. Avraamides' testimony that they were working weekends and holidays in Chimbote earlier today? A. Yes.

Q. Is it true that they work weekends, as far as you know, down there? A. Well, I can only take what he said, that they work weekends and holidays.

* * *

(169) The Court: Who was supposed to pay for the discharge of this vessel?

Mr. Repetto: The receiver. It's free out, C & F free out, which means the costs of physically discharging the cargo would fall upon the receiver.

I think you would agree with that.

Mr. Taliaferro: I agree.

The Court: So the receiver could take as long a time as he wished to discharge the vessel, subject to the demurrage coming in.

Mr. Repetto: He had to discharge the vessel, under this contract, Exhibits 2 and 3, the terms they were negotiating on, he had to discharge the vessel at 800 tons a day, weather, weekends and holidays excluded, which, basically, gave him eleven days to discharge where he had to pay demurrage, but which time would be extended under the Genjapscrap for the weekend and holiday period.

So he did not have a number of days. Technically, he had rate of discharge to maintain.

I trust counsel would agree with me.

(170) Mr. Taliaferro: I agree.

Q. When on days, if you can remember, or if you have your diary, please refer to it. Did you have your discussions with Mr. Avraamides about this cargo out of the Lakes for Egypt, I think you said, a sulphur cargo? A. Well, I have Telexes, copies of Telexes, on that.

And the Egyptian cargo was on the offer, this is the actual firm offer we received, and that was on October 29, in the morning. And then also in the afternoon.

Q. October 29? A. Yes.

Q. And what was the other cargo? You mentioned a grain cargo, I believe. A. There was a grain cargo to Avenmouth from Chicago.

Q. When was that? A. That was—the last Telex I see here is November 21.

Q. When was the first indication of that cargo? A. I would assume three, four days earlier.

Q. So some time around November 18 or so? A. Yes, thereabouts.

Q. When were you asked by Mr. Avraamides to find (171) a vessel to carry the shredded scrap from Jacksonville to Chimbote? A. Well, I think the first time he mentioned it to me was very early in the year, but then the whole thing died away again. I think it cropped up again, I assume the end of October, early November.

I may be out a little bit. I can't recall exactly when it was. But it was at least some time prior to what we are talking about now.

Q. When did you first report the cargo on the market? A. I would say by the end of October, most probably.

Q. This is the Jacksonville-Chimbote— A. Yes.

Q. And did you report that cargo or offering on this transportation news ticker? A. Yes.

Q. You are a member or have access to it? A. Yes, I am a subscriber to it.

Q. Do you remember when you put it out on the ticker? A. I can't recall when was the first time.

Q. You did it more than once? (172) A. Yes.

Q. You keep it out continuously? A. Every second day, every third day; depends on the market conditions, and so on.

* * *

Re-direct Examination by Mr. Taliaferro:

Q. Mr. Traa, as of November 20, had you any discussions or had you had any discussions with Mr. Avraamides concerning whether or not the receivers were prepared to pay extra insurance on account of the age of the vessel? Specifically, the Mary. A. No. I never get involved in that, I would say.

Q. Based upon the market quotations that you had received with respect to the Promethee at or about November 20, was it in Tidewater's advantage, or to Tidewater's advantage, rather, to send the Promethee to Chimbote? A. A. No.

The Court: Wait a second.

You proved they already turned down that lucrative deal before you ever advertised this cargo.

(173) The Witness: The thing is he wouldn't let me fix any of the other cargos that were offered in because he said I have to keep the ship up my sleeve for the Chimbote cargo if we can't find anything else there.

Q. Mr. Traa, can the owner of a vessel compel a receiver to work on Sundays or holidays? A. Not to my knowledge, no.

Q. Or a charterer of a vessel, assuming the Genjapscrap form applies? A. A charterer? You know, I'm not involved in buying and selling scraps. The charterer would probably be the man who owns the cargo. An owner couldn't compel a receiver to do it. Whether a charterer could do it, I wouldn't know.

Q. Under the Genjapscrap form, there are these exceptions for holidays? A. They couldn't compel anybody to work on those days.

* * *

(176) The Court: Today is Wednesday. I will take briefs from both sides on Monday, the 19th, on damages.

* * *

POST TRIAL MEMORANDUM ON BEHALF OF PLAINTIFF.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------X

ATLANTIC & GREAT LAKES STEAMSHIP CORP.,

74 Civ. 5648 (CMM)

Plaintiff,

-against-

STEELMET, INC. and TIDEWATER TERMINALS, INC.,

Defendants.

----------X

POST TRIAL MEMORANDUM ON BEHALF OF PLAINTIFF

STATEMENT

This action concerns the breach of a maritime contract, namely a voyage charter party for the vessel M. V. MARY for the carriage of 9375 long tons of shredded scrap from Jacksonville, Florida to Chimbote, Peru. (Plaintiff's Ex. 2 & 3) The charter party fixture terms were as set forth in a telex of November 20, 1974 and in a

"GENJAPSCRAP' form charter party dated November 8, 1972 for the vessel, ATLANTIC FREEDOM. Plaintiff's Ex. 4)

Trial was held on July 14, 1976. Plaintiff called two witnesses: Mr. Arild Pettersen, Vice President and Manager of the Dry Cargo Chartering Department of A. L. Burbank & Co., Ltd., Plaintiff's chartering broker (Pre Trial Order, Para. 3 (a) 3; Testimony of Pettersen) and Mr. Kevin J. Kerwin, Operations Manager of the Plaintiff.

Plaintiffs also placed in evidence 18 exhibits plus the deposition testimony of Andreas Avraamides, taken February 3, 1976. Mr. Avraamides was the Chartering Manager of Tidewater Terminals and Export Manager of Steelmet, Inc. Plaintiff also offered the deposition testimony of Mr. Javier A. Zegarra Zavaleta, dated May 12, 1976 and filed with the Court, May 28, 1976.

Defendants' witnesses were Mr. Avraamides and Mr. Ivar Traa, President of Antra Shipping Ltd., Montreal, the authorized chartering broker for defendants.

At the conclusion of the trial the Court allowed, at Plaintiff's request, the filing of briefs "on the issue of damages only".

APPLICABLE LAW

The law is well settled that in actions by a shipowner (or dis-

ponent owner) against a charterer for damages for breach by charterer, the recoverable damages are the freight which shipowner would have received under the charter, less any saving to shipowner due to non-performance by charterer. Liberty Navigation & T. Co., v. Kinoshita & Co., Ltd., 285 F 2d. 343 (2 Cir., 1960); cert. den 366 U.S. 949.

The questions to be raised are set out in an earlier decision of the Court of Appeals, Second Circuit in United Transp. Co., v. Berwind-White Coal-Mining Co. (13 F 2d. 282; 2 Cir., 1926) where the Court stated:

> "Complaint is made of the amount of damages, although it is admitted that the cause is legally identical with Venus Shipping Co., v. Wilson, 152 F. 170, 81 C.C.A. 368; and that the court below professed to follow that case. Remembering (as was said in the Venus Case) that "approximate accuracy is all that can be reasonably expected", we have gone over the commissioner's report and think appellant's complaints baseless.
> [3] The questions in such a case are these:
> (1) How much would the shipowner have made under the canceled charter if all had gone well; if no casualty had occurred, and no extraordinary expense been encountered?
> (2) How much did the charterer make under the substitute charter, the circumstances being what they actually were?
> [4] The basic facts ascertained, and it appearing that the substitute charter represented a loss, it is the business of the court to grant as solatium to the injured shipowner the difference between what he did earn and what

> he would have earned during the time that would have been required to fulfill the charter of which he was wrongfully deprived. The computation and adjustment of such a matter is not a scheme of absolute certainty, but the inaccuracy must be plain, and plainly injurious, to move any court in favor of the original wrongdoer; i. e., contract breaker" (at pp. 283-284)

In this instance Plaintiff is claiming not the full freight which it would have received but only the net profit which can be estimated from the breached contract voyage less the actual profits and savings gained during the same period.

As stated by the Court of Appeals, Third Circuit in Gardner v. The CALVERT, (253 F. 2d 395; 1958), "It is settled that in establishing loss of future profits, it is only the fact that some loss has resulted from the Defendant's breach of contract which must be proved with certainty. Once that fact has been established the actual amount of the lost profits need not be proved with certainty but may be estimated from the facts in evidence, including the inferences to be drawn from them and the probabilities which they suggest."

PLAINTIFF'S MINIMUM DAMAGES

Plaintiff's witness Kerwin testified to the expected profits which were anticipated when the November 20, 1974 fixture were made. He also testified as to the expected expenses on the voyage and that a

profit would result. It was expected that the voyage would, for accounting purposes, commence at St. Croix with a ballast run to Jacksonville. The voyage would have ended upon completion of discharge at Chimbote.

Both Mr. Kerwin and Mr. Pettersen testified that after completion of discharge at Chimbote the M. V. MARY was expected to load concentrates in Peru for carriage to Europe. No claim has been made for lost profits on that voyage, and speculation as to its profit or loss are irrelevant.

As stated in the cases cited above, the formula for establishing the damages involves four (4) distinct steps. First, establishment of the total anticipated freight revenue; Second, establishment of the reasonably anticipated period of the breached charter party voyage or the time it would have taken to perform it; Third, establishment of the reasonably anticipated costs of performance during the period "if all had gone well" (United Transp. Co. v. Berwind, supra); and, finally, the net profits or savings actually gained during the same period.

In making these calculations as are detailed below, Plaintiff has considered only those facts which are in evidence and the testimony of all the witnesses.

Speed calculations for the MARY are based on the 11 knot speed guarantee in the charter party (Plaintiff's Ex. 1), despite Mr. Kerwin's

testimony that Plaintiff's experience with the vessel indicated a greater speed.

A load rate of 2500 long tons per day at Jacksonville and a discharge rate of 800 long tons per day at Chimbote were used as per the fixture telex (Plaintiff's Ex. 2 & 3), despite Mr. Kerwin's testimony that he had experienced (and anticipated) a faster rate at Chimbote.

All distances between ports are based on the testimony of Kerwin and Avraamides and the mileage tables referred to during that testimony.

Plaintiff's calculations are as follows:

I. Anticipated Revenue

The M. V. MARY'S anticipated revenue under the breached contract is simply arrived at from Plaintiff's Exhibit 2. The fixture was for "9375 LT MINMAX SCHREDDED SCRAP" at a freight rate of US 29.25 PER LT FIOT". Thus, anticipated revenue was $274,218.75, less a commission of 3-3/4% or $10,283.20, giving a net revenue of $263,935.55.

II. Anticipated Duration of Performance

The anticipated voyage included four stages: a ballast leg from her last port, St. Croix, to Jacksonville; loading at Jacksonville; a sea leg voyage from Jacksonville to Chimbote via the Panama Canal;

and discharging at Chimbote.

In port calculations are based on the terms of the proposed GENJAPSCRAP charter party (Plaintiff's Ex. 4) as to tendering notice of readiness, exclusion from laytime of Sundays and Holidays (WWSHEX) and weather working days of 24 hours. (Clause 18, Ex. 4)

Plaintiffs also considered the actual experience of the defendant's vessel PROMETHEE, as evidenced by the testimony of Mr. Avraamides and his testimony that the receivers at Chimbote actually worked around the clock including weekends and holidays.

It is also to be noted that although certain time may be excluded from allowed laytime, this does not necessarily mean that such time will not be actually used. This was brought out in the testimony of Kerwin and during the cross examination of Mr. Traa. In other words, it is more likely that loading or discharging will commence upon the arrival of a vessel, even though "allowed laytime" may not commence until a later time.

As detailed below, Plaintiff submits that the reasonably anticipated duration of the breached charter party would be 35 days, commencing November 29, 1974 and ending, at the latest, January 2, 1975.

The evidence indicates as follows:

M. V. MARY sailed from St. Croix on November 29, 1974 at 0945.

POST TRIAL MEMORANDUM ON BEHALF OF PLAINTIFF

The distance to Jacksonville is 1194 nautical miles. At 11 knots transit would have required 4.5 days, with the vessel at sea November 29 through December 3rd, 1974 (a Tuesday)

Loading at Jacksonville would have commenced on Wednesday, December 4 even though laytime would not commence until the next day. It can be reasonably assumed that charterers would not have wasted a "free" mid week day.

The loading rate was 2500 long tons per day. Therefore it would have required 3.75 days to load 9375 long tons. By Saturday noon, the vessel should have loaded 8750 long tons, leaving 625 tons to be loaded, or about 6 hours work. It could therefore reasonably be anticipated that the vessel would have been finished on Saturday. Avraamides testified that he worked his own ships a full day on Saturday.

Accordingly, it is reasonable to assume that the vessel would have sailed on Sunday, December 8, 1974.

The distance from Jacksonville to Cristobal was agreed by all parties to be 1516 nautical miles. At 11 knots this would require 5.75 days steaming time. The vessel would have been at sea from December 8 through December 13.

All parties agreed on 1 day to transit the Panama Canal, such transit being made on December 14.

The distance from Balboa to Chimbote was agreed as 1163

nautical miles. At 11 knots this would require 4.5 days steaming time. The vessel would have been at sea from December 15 through December 19, arriving at Chimbote on December 19, a Thursday.

Discharging 9375 long tons at 800 tons per day would have required 11.72 days. Discharge would have commenced at the latest, on December 20, and would have ended on January 2, 1975. While the GENJAPSCRAP excludes Sundays and Holidays, Mr. Avraamides testified that the receivers worked around the clock on weekends and Holidays. However, in this calculation Plaintiff has deducted 2 Holidays, namely Christmas and New Years.

It is to be noted that Plaintiff's calculations have rounded off all part days to full days, thus increasing the duration of the anticipated voyage.

For instance, the time to steam from Jacksonville to Cristobal is 5.75 days, so the vessel would have arrived at Cristobal sometime during December 13. Plaintiffs have used all of December 14 to transit the Canal, while, in fact, transit could have started on the 13th and the vessel would be at sea and away from Balboa on the 14th instead of on the 15th as shown above.

Accordingly, it is submitted that the voyage could have been less than 35 days, but Plaintiff has taken pains to give defendants every "benefit of the doubt".

POST TRIAL MEMORANDUM ON BEHALF OF PLAINTIFF

III. Reasonably Anticipated Costs of Performance

The daily hire paid by Plaintiff for the MARY at this time was $4,200 per day. (Plaintiff's Ex. 1, Clause 4, line 51) Total hire for the 35 day voyage would have been $147,000.

Fuel costs, as testified to by Mr. Kerwin and as used by Mr. Avraamides in his calculations (Defendant's Ex. F for ID) were $75 per ton for Intermediate Fuel Oil and $110 per ton for Marine Diesel Oil.

The MARY'S consumption was 19 tons at sea and 7 tons in port of IFO and 1/2 ton per day of MDO.

The vessel would have spent a total of 17 days at sea and consumed 323 tons IFO, and would have spent a total of 13 days in port and consumed 126 tons. Thus there would have been a total consumption of 449 tons IFO at $75 per ton with a total expense of $33,675.00.

The vessel would have consumed 17.5 tons of marine diesel at a cost of $110 per ton, with a total expense of $1,925.00.

Accordingly, the total fuel cost was $35,600.00.

Mr. Kerwin testified to estimated Port charges of $5,000 at Jacksonville, $6,000 for transit of the Panama Canal and $2,000 for Chimbote, giving total port charges of $13,000.00. These figures were based on his previous experience with the MARY and the particular ports. It is to be recalled that Plaintiff had sent three

vessels to Chimbote in 1974 and was familiar with the costs there. While these figures are estimates, there in no evidence to dispute their accuracy.

Finally, Plaintiff would, admittedly, have had to pay the extra premium on cargo insurance based on the vessel's age. Plaintiff agrees that this cost would have been $5,589.00, at the current insurance market rate of $0.375 per $100 on a cargo value of $1,490,506.00.

Thus the anticipated profit can be summarized as follows:

Net Freight Income		$263,935.55
Less:		
Time Charter Hire	$147,000	
Fuel	35,600	
Port Charges	13,000	
Extra Insurance	5,589	$201,189.00
		==========
Net Anticipated Profit		$ 62,746.55

IV. Net Profits or Savings Actually Gained

When charterers breached the November 20, 1974 contract, Plaintiff sought other employment.

As testified to by Mr. Kerwin, the vessel actually performed the following voyages between November 29, 1974 and January 2, 1975.

The vessel sailed from St. Croix to Halifax where it loaded gypsum for discharge at Edgewater, New Jersey. The vessel arrived in Halifax on December 7, 1974 at 0425 hours and sailed at 1700 hours

on the same day.

MARY arrived at Edgewater on December 10 and completed discharging on December 14. On that day the vessel proceeded to drydock at Hoboken and left the dock and returned to Plaintiff's service on December 18. The vessel proceeded to Mobile where she arrived on December 26, 1974 at 0730 hours. The vessel completed loading on December 30, 1974 and sailed the following day.

From November 29, 1974 through December 14, 1974, the completion of discharge at Edgewater, the vessel realized a net profit of $680.00, after deducting hire, fuel and expenses.

From December 14 to 18, the vessel was off hire, and charterers did not pay hire of $16,800. From December 18 through January 2, 1975 the vessel was either at sea in ballast or in port loading and had no income. Expenses for the period were hire, fuel and charges. Based on the total length of the voyage from Mobile (December 18 to January 30, a period of 44 days) and the total loss on that voyage of $50,710.31, the vessel operated at a daily loss of $1,152.51 per day.

Thus, for the period of December 18 through January 2, 1975 the vessel lost $18,440.16 which more than destroyed the off hire savings of $16,800 during the drydock period and the profits from the gypsum voyage.

Accordingly, during the period of November 29, 1974 to January 2,

1975 the MARY incurred no net profits and actually suffered a loss of $960.16 despite the off hire period and the gypsum profit.

Thus Plaintiff had no actual net earnings or savings to deduct from the anticipated profit it would have earned, but for defendants' flagrant breach of the November 20, 1974 fixture.

V. Summary

It is submitted that, following the formula set forth in United Transp. v. Berwind-White (supra, p. 3), Plaintiff in the instant case has suffered minimum provable damages of $62,746.55. This amount is the reasonably anticipated profit that Atlantic & Great Lakes Steamship Corporation would have gained on the Jacksonville/Chimbote voyage.

Defendants have argued that the cost of a ballast trip back from Chimbote must be added to the voyage expenses. (Avraamides, Ex. F. for ID) This is not proper. In voyage accounting only the ballast leg to the loading port is added. In anticipating costs during negotiations for a charter the owner knows where his vessel is. He does not know what future business may develop during performance. Any ballast leg after discharge is added into the estimates for the next voyage.

It is submitted that only the St. Croix to Jacksonville ballast leg is relevant in this case.

POST TRIAL MEMORANDUM ON BEHALF OF PLAINTIFF

INTEREST

Plaintiff seeks interest on its lost profits from December 15, 1974 to date. Under the terms of the fixture (Plaintiff's Ex. 2), 95% of the freight was to be pre-paid. The GENJAPSCRAP form charter provides payment of freight "within seven (7) days after completion of loading and surrender of signed Bills of Lading ..." (Plaintiff's Ex. 4, Clause 1, lines 23-24)

Plaintiff reasonably anticipated receiving 95% of the net freight, $250,738.77, by December 15, 1974 and would have had the use of that money from that date.

The Court of Appeals, Second Circuit, has long held that interest is to be allowed in admiralty cases. "It is stated repeatedly that the award of interest in admiralty is a matter of the Court's discretion. (citing cases) But the cases show that this is a legal discretion, and the award is to be made whenever damages lawfully due are withheld, unless there are exceptional circumstances to justify the refusal." The WRIGHT, 109 F 2d. 699, at 702 (2 Cir., 1940)

3 Benedict on Admiralty, sec. 419, states, "In admiralty, interest on claims arising out of breach of contract is a matter of right, but the allowance of interest on damages in cases of collision, or other tort or for unliquidated damages, is always in the discretion of the Court...".

POST TRIAL MEMORANDUM ON BEHALF OF PLAINTIFF

In the instant case there is both a breach of contract and a maritime tort. Defendants were required to cooperate with Plaintiff in bringing about performance of the contract and to help in obtaining the receivers' approval.

Instead, Avraamides misrepresented the facts in advising receivers that there would be extra insurance costs due to the MARY'S age, but failed to advise them that such insurance would be for owner's account.

Further, while knowing the receivers were anxious to have the cargo loaded as soon as possible, defendants misrepresented the MARY'S estimated time of arrival at Jacksonville in an effort to get the receivers to affirmatively chose their own vessel. The only ETA for the MARY known to defendants was November 28, 1974 (Plaintiff's Ex. 2 and 3) Nonetheless, Avraamides telexed the receivers on November 26, 1974 and stated that MARY would be "ready to start loading Jacksonville approximately December 8, 1974." (Plaintiff's Ex. 12)

This misrepresentation was knowingly made to induce the breach of a maritime contract and is, in itself, a maritime tort. Sidney Blumenthal & Co., v. United States, 30 Fed. 247; (2 Cir. 1929). This Court has held that "It is clear that the inducement of a breach of a maritime contract which causes a light sailing is indeed a maritime

tort." Orient Mid-East Lines, Inc., v. Albert E. Bowen, Inc., 255 F. Supp. 627 (S.D.N.Y. 1966)

As defendants here are guilty of both a breach of contract and a tort, the Court has discretion not only as to the granting of interest, but as to the rate of interest and the Court is not bound to apply the rate of interest specified in State law. Gardner v. The CALVERT, (supra, at pp. 402-403)

It should also be noted "that maritime law might permit the charterer, at least where the breach of contract was deliberate, to recover the profits derived by the wrongdoing owner for its use of the ship to which charterer was entitled." Commercial Metals Co. v. International Union Marine Corp, 318 F. Supp. 1335 (S.D.N.Y., 1970) Here, defendants, for whatever motive, deliberately misrepresented facts to the receiver to induce them to disapprove the MARY so that their own vessel, M.V. PROMETHEE, would perform the contract. Defendants' profits can be estimated from Mr. Avraamides' own testimony. He testified on direct examination that Tidewaters' cost per ton in moving the cargo from Jacksonville to Chimbote was $26.42. The freight rate specified in the voyage charter between Tidewater and Steelmet was "U.S. Dollars 38.00 (Thirty-Eight)per Metric Ton...". (Plaintiff's Ex. 11, charter party dated November 22, 1974 at line 25) This same freight rate appears in Steelmet's invoice to the receivers,

Siderperu. (Plaintiff's Ex. 18) Accordingly, based on a cargo of 9375 long tons or 9525 metric tons, Tidewater's profits were $11.58 per metric ton ($38 per ton minus costs of $26.42) or a total of $110,299.50.

Accordingly, Plaintiff should be allowed at least their demonstrated anticipated profit of $62,746.55 with interest at the then prime rate of 8-1/2% from December 15, 1974 as a result of defendants' clear breach of contract and deliberate misrepresentation and interference with Plaintiff's rights.

CONCLUSION

It is respectfully submitted that there was a binding fixture of the vessel MARY on November 22, 1974 when defendants' broker concluded negotiations. The condition of receivers' approval included the duty of defendants to cooperate with Plaintiff in obtaining such approval.

Both Tidewater and Steelmet were under a duty to do nothing to prevent receivers' approval of the MARY. The misrepresentations made as to the extra insurance and the vessel's estimated time of arrival at the loading port were deliberate and were designed to prevent the condition of receivers' approval from being met. (Samuel Baum & Sons v. Educational Alliance, 172 N.Y.S. 2d 1015)

POST TRIAL MEMORANDUM ON BEHALF OF PLAINTIFF

This clear breach of duty requires that both Tidewater Terminals, Inc. and Steelmet, Inc. be held jointly and severally liable to Plaintiff for a minimum award of $62,746.55 plus interest at 8-1/2% from December 15, 1974.

Dated: New York, New York
July 19, 1976

Respectfully submitted,
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DEFENDANTS' POST-TRIAL MEMORANDUM.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

ATLANTIC & GREAT LAKES STEAMSHIP CORP., :

Plaintiff, :

-against- : 74 Civ. 5648 CMM)

STEELMET, INC. and TIDEWATER TERMINALS, INC., :

Defendants. :

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DEFENDANTS' POST-TRIAL MEMORANDUM

Preliminary Statement

Defendants submit this post-trial memorandum in support of their contentions (1) that no contract to charter the M/V MARY ever existed because the receiver did not approve the vessel; (2) that defendants did not prevent the fulfillment of that condition; and (3) that even assuming the MARY could have met her laydays and that the defendants breached any duty, the plaintiff has not proved that it incurred any damages in consequence thereof.

The Evidence

The uncontroverted evidence established that:

1. The charter of the MARY was expressly conditioned upon approval of the vessel by the receiver of the cargo.

DEFENDANTS' POST-TRIAL MEMORANDUM

2. On November 21 or November 22, Mr. Avraamides met with two representatives of the receiver, Mr. Molina and Mr. Zegarra, in the office of Mr. Robert Waisfisz, a vice-president of Steelmet. Mr. Waisfisz asked Mr. Avraamides what vessels were available to carry Sider's cargo of shredded steel scrap to Chimbote. Mr. Avraamides stated that the MARY was available and described the MARY's age, characteristics and laydays at Jacksonville stipulated in the November 20, 1974 telex (Ex. 3).

3. Mr. Molina inquired whether any other vessels were available to carry the cargo and Mr. Waisfisz asked Avraamides whether Tidewater didn't have a vessel available in the Great Lakes. Mr. Avraamides replied that the M/V PROMETHEE was "open" and gave the PROMETHEE's age, characteristics and her estimated laydays at the end of November.

4. Mr. Molina instructed Mr. Avraamides to ship the Sider cargo aboard the PROMETHEE.

5. Subsequent to this conversation, Mr. Avraamides advised Mr. Traa that the receivers had declined to approve the MARY and Mr. Traa so advised Mr. Petterson.

6. Before Mr. Molina nominated the PROMETHEE, it had been defendants' intent to charter the PROMETHEE in the favorable end-of-season Great Lakes market for eastbound cargoes, but defendants were unwilling to commit the PROMETHEE to a Great Lakes cargo until transportation had been arranged for Sider's cargo to Chimbote. Indeed, on November 20, 1974, Mr. Traa communicated to Mr. Avraamides an offer for the

PROMETHEE to carry a cargo of grain from Chicago to Avonmouth, England at £14 which would have generated a profit for Tidewater in excess of $100,000. However, Tidewater did not respond to the offer because it did not wish to charter the PROMETHEE to others until transportation of the Sider cargo had been firmly set.

Point I

No Charter Party Agreement Ever Existed

The law is clear that if a charter is fixed subject to a condition, neither party is contractually bound to the charter party until the condition has been satisfied or withdrawn.

> Orient Mid-East Great Lakes Service v. International Export Lines, Ltd., 315 F. 2d 519, 522-24 (4th Cir. 1963)
>
> A. E. Staley Manufacturing Co. v. Northern Cooperatives, 168 F. 2d 892, 895 (8th Cir. 1948)
>
> Banking and Trading Corporation Ltd. v. Floete, 257 F. 2d 765 (2nd Cir. 1958)
>
> Uninav S.A. and Federal Commerce and Navigation Co., Ltd. v. Molena Trust Inc., 1973 A.M.C. 1386 (S.D.N.Y. 1973)

As the court stated in Orient Mid-East Great Lakes Service, supra at 522:

> "No contract, we conclude, evolved from these events which constituted the fact findings of the District Court. Our determination rests primarily on this legal theorem: when an offer or a counter-offer is accepted subject to a condition or reservation, neither party is bound to an agreement until the condition or reservation has been withdrawn or satisfied. Iselin v. United States, 271 U.S. 136, 139, 46 S.Ct. 458, 70 L.Ed. 872 (1926);

DEFENDANTS' POST-TRIAL MEMORANDUM

> Nolan Bros. Inc. v. Century Sprinkler Corp., 220 F. 2d 726, 728 (4 Cir. 1955); United States v. Mitchell, 104 F. 2d 343, 346 (8 Cir. 1939); Hoffstot v. Dickinson, 166 F. 2d 36 (4 Cir. 1948); Corbin Contracts §§90-92 (1952).
>
> * * *
>
> Until the original reservation had been settled or retracted, owner was not obligated to any contract whatsoever or to the pursuit of further intercourse. Iselin v. United States, supra, 271 U.S. 136, 139, 46 S.Ct. 458, 70 L.Ed. 872 (1926); Nolan Bros. Inc. v. Century Sprinkler Corp., supra, 220 F. 2d 726, 728-729 (4 Cir. 1955)"

A similar statement of this principle is found in the A. E. Staley Mfg. Co. decision at 895:

> "In the law of contracts the intent of the parties must be looked to and a contract is not made so long as both parties anticipate that something remains to be done to establish contractual relations. As said by the author of the article on Contracts, 12 American Jurisprudence, Sec. 23, p. 519, 'A contract is not made so long as in the contemplation of both parties thereto something remains to be done to establish contractual relations.'"

In the instant case, the receiver's approval of the MARY was an express condition precedent to the charter. The receiver having rejected the MARY, no charter came into existence. The case is thus governed by the principle that when a third person not under the control of either party fails to perform a condition precedent, neither party is liable to the other.

> Union Paving Company v. City of Philadelphia, 95 Pa. Sup. Ct. 342 (1928)
>
> Frank v. Allegheny Co., 119 F. 2d 614, 617 (3rd Cir. 1941)
>
> Volume 17A, C.J.S. Contract §468

As stated in the Frank decision at 617:

> "The approval of these two [municipal] bodies was a contingency of which the parties to this contract

> were aware, but which neither of them could control.... The delay was due to the failure of the Township and the State Board to grant approval, not to anything done or omitted by the County, and the County did not undertake to guarantee that such approval would be forth coming."

As in the Frank decision, the defendants never assured the plaintiff that the receiver's approval would be forthcoming.

Point II

The Defendants did not Prevent the Receiver's Approval of the MARY

The evidence does not support the plaintiff's contention that the defendants offered their own vessel in competition with the MARY for the Sider contract.* The uncontradicted testimony is that the defendants presented the MARY to the receiver for approval and that it was only after the receiver inquired whether any other vessels were available that the defendants named the PROMETHEE.

The cases cited in plaintiff's pretrial memorandum are readily distinguishable because in each of them the defendants' conduct prevented fulfillment of the condition of the contract. That essential element is wholly lacking in the present case. Defendants informed Messrs. Molina and Zegarra of all of the relevant facts, i.e., the MARY's age,

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* To the extent that plaintiff claims tortious interference with its alleged contractual rights (see pages 1-2 of plaintiff's pre-trial memorandum) that claim is incompatible with its claim for breach of contract. Ryan v. Brooklyn Eye and Ear Hospital, 360 N.Y.S. 2d 912, 46 A.D. 2d 87 (2nd Dept. 1974)

characteristics and laydays from November 27 to December 9 which period included the then estimated arrival time of November 28. At the time of the meeting, defendants could not give the Sider representatives an arrival time for the MARY because plaintiff had not guaranteed any arrival date to defendants in the November 20 telex. Plaintiff was in no position to estimate reliably the vessel's arrival date for loading because plaintiff, under pressure from the vessel's owner, intended to drydock the MARY at Jacksonville for an overdue annual survey before tendering the ship to Tidewater (Kerwin Dep. pp. 95-97).

Charter cases adjudging violations of an implied obligation of good faith uniformly involved obstructive acts by a defendant whose financial interest was best served by frustrating the condition precedent -- acts "far beyond the bounds of accepted commercial practice...." Wilamette Trans v. Mobile Mar. Trans., 1973 A.M.C. 1631, 1633 (not otherwise cited) Thus intentionally ordering a ship to a destination it could not possibly reach; intentionally delaying the discharge of a vessel; and intentionally obstructing a ship's clearance through customs, have all been held bad faith behavior on the part of a charterer. Wilamette Trans v. Mobile Mar. Trans., supra; Empressa Maritima de Transportes v. Transatlantic, 1960 A.M.C. 1140 (S.D.N.Y. 1960); Bonanno v. Tweedie Trading Co., 117 F. 991 (S.D.N.Y. 1902).

In the present case, it was in Tidewater's economic interest for the receiver to approve the MARY thereby free-

ing the PROMETHEE to carry a lucrative cargo out of the Great Lakes. The evidence is uncontroverted that on November 20 Tidewater was offered a grain cargo for carriage aboard the PROMETHEE from Chicago to Avonmouth at £14. Tidewater declined this offer to enable the PROMETHEE to carry Sider's cargo to Chimbote. If accepted, the offer would have produced an estimated profit to Tidewater of approximately $137,000. (Ex. E)

What more could Tidewater have done to obtain the receiver's approval of the MARY? Concealment of the PROMETHEE's availability would have been a breach of duty owed to Sider under its sales contract with Steelmet Export.

It is significant that the case of Van Valkenburgh, Nooger & Neville, Inc. v. Hayden Publishing Co., Inc., 330 N.Y.S. 2d 34, 330 N.Y.S. 2d 239 (1972) cited by plaintiff to support its argument that defendants breached an implied obligation of good faith held that there was no breach of an implied obligation of good faith where the defendant, which had been publishing plaintiff's books for some eight years, covertly commenced publication of a series of books virtually identical to the plaintiff's, suspended advertisement of the plaintiff's books, substituted similar advertising for the new series and solicited orders from customers of the plaintiff's books. The Court of Appeals affirmed the Appellate Division's finding that the publisher had breached a covenant to use its "best efforts" in promoting the plaintiff's books but also affirmed the holding that there had been no breach

by the publisher of the "condition implicit in the contract to act in good faith...." In the instant case, the plaintiff never requested the defendants to use their best efforts to obtain the receiver's approval and the defendants, unlike the defendants in Van Valkenburgh, never undertook to do so.

Point III

Plaintiff Failed to Prove any Damages

Plaintiff had the burden of proving its damages, if any, for alleged breach of the charter.

> THE GAZELLE and Cargo, 128 U.S. 474, 9 Sup. Ct. 139 (1888)
>
> Liberty Navigation & Trading Co. v. Kinoshita & Co., Ltd, Tokyo, 178 F.Supp. 729 (S.D.N.Y. 1959) judgment modified and as modified aff'd 285 F.2d 343 (2d Cir. 1960)
>
> Nat G. Harrison Overseas Corp. v. American Tug TITAN, 516 F.2d 89 (5th Cir. 1975) modified as to amount of damages on rehearing, 520 F.2d 1104 (5th Cir. 1975)

In THE GAZELLE and Cargo, supra, the court succinctly stated the measure of damages for alleged breach of the charter party:

> " The ship-owner who is prevented from performing a voyage by the wrongful act of the charterer is prima facie entitled to the freight that he would have earned, less what it would have cost him to earn it." 12 U.S. at 483

Plaintiff entirely failed to meet its burden of proof. Specifically plaintiff did not prove:

1. That the MARY could have tendered notice of readiness within the cancelling laydays (November 28-

December 9) stated in the telex of November 20 (Ex. 3);

2. The date when the MARY could have completed drydocking at Jacksonville in readiness to load cargo;

3. That the MARY could have completed drydocking and overdue annual survey before her cancelling date of December 9;

4. That the MARY could have made a profit on the carriage of any outbound cargo from Chimbote;

5. That the MARY would not have been obliged to proceed in ballast from Chimbote to the United States Gulf Coast for the next cargo after carrying Sider's.

It was incumbent upon the plaintiff to produce in court any affreightment contract under which it could have loaded an outbound cargo from Peru or other West Coast South American port after discharge of Sider's cargo. To the contrary, Mr. Kerwin admitted that he did not have any communications with any shipper concerning the availability of any outbound cargoes. No proof was offered to show the economic consequences to plaintiff resulting from the carriage of even a putative cargo out of Chimbote.

Defendants looked hard for an outbound cargo from Chimbote from the PROMETHEE but the offerings were more distasteful than bringing the PROMETHEE back through the Canal in ballast at a loss of $60,000.

Moreover, plaintiff's damage calculations were unabashedly overstated. In addition to the errors which plaintiff's counsel acknowledged in presenting plaintiff's case,

plaintiff's calculations cannot be reconciled with the stipulations contained in the telex of November 20 (Ex. 3) and the Genjapscrap form with respect to the calculation of laytime.

See Liberty Navigation & Trading Co. v. Kinoshita & Co., Ltd., supra at 347

While the court noted that defendants' analysis of plaintiff's damages assumed an arrival date at Jacksonville of November 28, a holiday, a recalculation (See Appendix to this brief) based on the vessel's arrival at Jacksonville on December 9, a Monday and the last permissible layday provided in the telex dated November 20 (Ex. 3), also yields a net loss for the voyage to the plaintiff.

Whether the MARY be assumed ready to hold at Jacksonville on November 28 or December (a Monday and hence favorable to plaintiff) it is clear from the proof that plaintiff would not have made a profit if the MARY had carried Sider's cargo to Chimbote. Consequently plaintiff has failed to prove that it sustained any damages.

Conclusion

Defendants are entitled to judgment dismissing the complaint with costs.

Dated: New York, New York
July 19, 1976

Respectfully submitted,

Thacher, Proffitt & Wood

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Of Counsel

DEFENDANTS' POST-TRIAL MEMORANDUM

Appendix

Analysis of income and expenses for hypothetical voyage of the M/V MARY from St. Croix to Chimbote via Jacksonville.

The analysis is based upon the following assumptions:

(a) A loading rate of 2,500 LT per weather working day, Sundays and holidays excluded, even if used;

(b) A discharging rate of 800 M.T. per weather working day, Sundays and holidays excluded, even if used;

(c) Laytime to commence at loading and discharge ports from 0800 hours the next working day after notice of readiness is tendered during office hours; time from Saturday noon until Monday 0800 hours and from midnight preceding a holiday until 0800 hours the day after a holiday excluded even if used;

(d) The MARY arrived and tendered notice of readiness on Monday, December 9, 1974, the last permissible layday provided in the telex dated November 20 (Ex. 3); and

(e) The MARY's cruising speed was eleven knots as warranted in the time charter between her owner and plaintiff (Ex.1).

1. Time consumed in loading at Jacksonville through expiration of laytime -- loading 9375 long tons at 2500 long tons per weather working day equals 3 days 18 hours 00 minutes distributed over the calendar days listed

below:

Monday	Dec. 9, 1974	Not counting	00-00-00
Tuesday	Dec. 10, 1974	08000-2400	00-16-00
Wednesday	Dec. 11, 1974	0000-2400	01-00-00
Thursday	Dec. 12, 1974	0000-2400	01-00-00
Friday	Dec. 13, 1974	0000-2400	01-00-00
			3-16-00

Vessel departing Jacksonville December 13, 1974

Time used in loadings: 5 calendar days

2. Sailing time - St. Croix/Jacksonville (1194)

in perfect weather	4-12-00
Jacksonville/Cristobal (1516 miles) in perfect weather	5-18-00
Canal transit	1-00-00
Balboa/Chimbote (1163 miles) in perfect weather	4-12-00
Contingency allowance (bad weather and adverse currents)	1-12-00
Total sailing time	17-6-00

3. Time consumed in discharging at Chimbote through expiration of laytime - arriving and tendering notice of readiness December 26, 1974; discharging 9375 L.T. at 800 L.T. per WWD equals 11 days 17 hours 14 minutes distributed over the calendar days listed below:

Thursday	Dec. 26, 1974	Not counting	00-00-00
Friday	Dec. 27, 1974	0800-2400	00-16-00

Saturday	Dec. 28, 1974	000-1200	00-12-00
Sunday	Dec. 29, 1974	Excepted	00-000-00
Monday	Dec. 30, 1974	0800-2400	00-16-00
Tuesday	Dec. 31, 1975	0000-2400	01-00-00
Wednesday	Jan. 1, 1975	Excepted Holiday)	00-00-00
Thursday	Jan. 2, 1975	0800-2400	00-16-00
Friday	Jan. 3, 1975	0000-2400	01-00-00
Saturday	Jan. 4, 1975	0000-1200	01-12-00
Sunday	Jan. 5, 1975	Excepted	00-00-00
Monday	Jan. 6, 1975	0800-2400	1-00-00
Tuesday	Jan. 7, 1975	0000-2400	1-00-00
Wednesday	Jan. 8, 1975	0000-2400	1-00-00
Thursday	Jan. 9, 1975	0000-2400	1-00-00
Friday	Jan. 10, 1975	0000-2400	1-00-00
Saturday	Jan. 11, 1975	0000-1200	00-12-00
Sunday	Jan. 12, 1975	Excepted	00-00-00
Monday	Jan. 13, 1975	0800-1200	00-16-00
Tuesday	Jan. 14, 1975	0000-2400	00-21-00
			11-17-00

Time used at discharge: 19 days 21 hours.

4. Total Time Loading, Discharging, Sailing

Loading Jacksonville	5 days
Discharging Chimbote,	19 days 21 hours
Total sailing time,	17 days 6 hours
	42 days 3 hours

DEFENDANTS' POST-TRIAL MEMORANDUM

5. Total expenses until completion of discharge at Chimbote:

Hire: 42 days at $4200.00		$176,400.00
Fuel: 17.25 days x 19 (sea) = 327.75		
25 days x 7 (port) = 175.00		
IFO	502.75 x $75 = $37,706.25	
MDO 42.25 days x 1/2 = 21.11 x 110 = $2,322.10		
Port charge: Jacksonville	$6500	
Canal	6500	
Chimbote	3400	$16,400.00
		$232,827.35

6. Expenses of returning in ballast to a Gulf Port (New Orleans)

Chimbote/Balboa	4-12-00	
In Canal	1-00-00	
Cristobal/New Orleans	5-06-00	
	10-18-00	
Hire: 10-3/4 days at 4200		$45,150.00
Fuel: 9-3/4 x 19 (sea)	185.25	
1 x 7 (port)	7.00	
	192.25 IFO at $75 =	$14,418.75
1 x 1/2 MDO =	0.5 MDO at $110 =	55.00
Canal Dues		$ 3,400.00
Total return expenses		$63,023.75

DEFENDANTS' POST-TRIAL MEMORANDUM

7.	Total expenses under Item 5	$232,828.35
	Total expenses under Item 6	$ 63,023.75
	The voyage could have cost owners*	$268,852.10

8.	Net Freight Revenue to plaintiff	
	9375 L.T. x $29.25	$274,218.75
	Less 3-3/4% commission	$ 10,283.20
	Net Freight Revenue	$263,935.55
	Net Loss for Owners	$ 4,916.55

* If owners had agreed, pursuant to Clause 33 of the Genjapscrap form, to pay insurance penalty on account of vessel's age, total cost of voyage to Chimbote to plaintiff would be increased by $5,589.00 (cargo value of $1,490,506 at $0.375 per $100)

OPINION BY METZNER, D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

ATLANTIC & GREAT LAKES STEAMSHIP CORP., :

Plaintiff, :

-against- : 74 Civ. 5648 (CMM)

STEELMET, INC. and TIDEWATER TERMINALS, INC., :

Defendants. :

- x

FILED
FEB 28 1977
U.S. DISTRICT COURT
S.D. OF N.Y.

METZNER, D. J.:

Plaintiff, Atlantic & Great Lakes Steamship Corp. (Atlantic), seeks damages for breach of a voyage charter party for its vessel M.V. Mary. In the alternative, it seeks damages for tortious interference with its contractual rights. The defendants are Tidewater Terminals, Inc. (Tidewater), and Steelmet, Inc. (Steelmet). This court has jurisdiction of the parties and the subject matter of the action.

Antra Shipping Limited is a charter broker for Tidewater. A. L. Burbank & Company is a charter broker for Atlantic. On November 20, 1974, after oral negotiations between Antra and Burbank, the former sent a telex to Burbank confirming that it had "fixed" a charter of the Mary to Tidewater, subject to the receiver's approval by 4 P.M. on November 21, 1974, and subject to agreeing

in details in a Genjapscrap form of charter. Genjapscrap is the name given to the basic form of charter party for trading scrap to Japan. The telex fixed the freight rate, the lay days, discharging rate, the demurrage rate and the loading rate.

A copy of this telex was also sent to Mr. Avraamides, who is employed by Steelmet, and acts as export manager for Steelmet Export Company, and charter manager for Tidewater, both of which are subsidiaries of Steelmet.

The boat was to be chartered to carry shredded steel scrap that had been sold under a C and F contract by Steelmet Export to Sider, a company located in Chimbote, Peru.

On November 21, 1974, Atlantic's broker obtained a copy of the proposed charter from Steelmet. Atlantic had no problems in accepting the form of charter as it had used it in other charters to Peru, including the use of the Mary. It also had no problem in accepting the provision for paying the extra insurance premium entailed by the age of its vessel. The usual premium is for the account of the receiver of the shipment with the extra premium being the obligation of the vessel's owner.

When no word was received by 4 P.M. on November 21, of the receiver's approval, Burbank's man called Antra and

was asked to wait a bit longer for an answer. Burbank agreed to wait another day. Atlantic then contacted its agent in Peru to ascertain the reason for the delay. It was informed that the receiver had no intention of getting involved in the charter because it had no obligation to do so under a C and F contract. However, Antra, on November 26, notified Burbank that the receiver refused to accept the Mary because of its age. This statement was untrue.

— Sider was never asked to accept the Mary. On November 22, Tidewater had chartered the Promethee to Steelmet Export to carry this cargo of scrap. Avraamides sent a telex to Sider on November 26 that it was negotiating for the Mary and the Promethee, that it had been decided to use the Promethee because of the insurance penalty payable because of the Mary's age, and because the Promethee could be loaded earlier in Jacksonville. Interestingly enough, Avraamides pressed for an early approval of this decision stating that he had to finalize the negotiations with the vessel's owner. Sider did not know that Tidewater was the time charterer of the Promethee and had already chartered the vessel to Steelmet Export. If we had time, we might speculate as to the script of the negotiations between Avraamides as export manager for Steelmet Export and Avraamides as charter manager

for Tidewater.

Not only was Sider not asked to approve the Mary, but the asserted reasons for choosing the Promethee did not exist. The factor of insurance penalty was for the account of the vessel owner as provided in the very charter form which Avraamides insisted on using. On November 22, Avraamides was in no position to know which vessel would arrive first in Jacksonville. Finally, if Sider had a responsibility to give its approval of the Mary on November 21, it would have been forthcoming.

The telex used on November 20 by Antra to both parties has the same wording as found in Interocean Shipping Company v. National Shipping and Trading Corporation, 523 F.2d 527 (2d Cir. 1975). These words are, "Confirm having fixed . . . ." These words are used in normal, everyday negotiations in the chartering of vessels and mean that there has been a meeting of the minds and that a contract exists between the parties. The statute of frauds does not exist in the law of admiralty. The addition of the words "sub details" does not create a condition precedent for a meeting of the minds and the execution of a written contract. Interocean Shipping Company, supra at 535. That case dealt with a Mobiltime form of charter sub details while here we are considering a Genjapscrap form of

charter sub details.

Defendants argue that the approval of the use of the Mary by the receiver of the scrap was a condition precedent which was never satisfied and therefore the contract never became effective. It is true that the "fix" required such approval.

Why such a condition was placed in the "fix" has not been satisfactorily explained. The contract between Steelmet Export and Sider did not require such approval. Sider said on several occasions that it had no such obligation under its contract of purchase and had no desire to get involved in choosing a vessel. As pointed out above, no attempt was really ever made to obtain that approval. The details, if any, to be worked out regarding the charter could have been taken care of on November 21, but instead, Tidewater sought delay in processing those formalities. The conclusion is inescapable that the telexes from Steelmet Export to Sider after November 25 were a charade to cover up the fact that defendants wanted the business and sought to get out from under a binding contract. Tidewater is liable for breach of the charterparty with plaintiff.

Plaintiff has also sought to evolve a tort theory of recovery which I gather is for the purpose of creating liability on the part of Steelmet.

In the first place, I see no basis for proceeding against Steelmet, although if plaintiff is correct in its view, liability might attach to Steelmet Export. There was no real evidence as to the relationship of the defendants and Steelmet Export, nor is it adverted to in the pretrial order. Since Steelmet Export is not a party defendant, that should end the matter.

However, I should add that I find no basis for tort liability. Sider did nothing to interfere with the contractual relationship between plaintiff and Tidewater. Whatever Steelmet Export tried to do was without meaning or effect. It was an effort to provide an excuse for Tidewater in refusing to carry through on the "fix" for the Mary.

I have reviewed the computations in plaintiff's post-trial brief as to the amount of damages. I find that they are supported by the evidence and plaintiff is entitled to a recovery of $62,746.55 against Tidewater. The argument by defendants that the cost of returning from Chimbote in ballast is a deductible item in determining the amount of lost profit to plaintiff is without merit. The contract ended with unloading in Chimbote.

Interest shall be at the rate of 7 per cent from December 15, 1974. Van Nievelt v. Cargo & Tankship Management Corp., 421 F.2d 1183 (2d Cir. 1970).

OPINION BY METZNER, D.J.

So ordered.

Dated: New York, N. Y.
February 22, 1977

Charles H. Metzner
U. S. D. J.

Plaintiff's Exhibit 1.

Charter Party, dated May 3, 1974.

(See opposite page.) ☞

Time Charter

GOVERNMENT FORM

Approved by the New York Produce Exchange

November 6th, 1913—Amended October 20th, 1921; August 6th, 1931; October 3rd, 1946

This Charter Party, made and concluded in New York, N.Y. 3rd day of May 1974

Between COMPANIA REGINALD S.A. of Panama

Owners of the good Greek ~~Steamship~~ Motorship "MARY" of

of 10,687 tons gross register, and 4,494 tons net register, having engines of indicated horse power

and with hull, machinery and equipment in a thoroughly efficient state, and classed

at of about cubic feet bale capacity, and about 14,783 tons of 2240 lbs.

250 tons deadweight capacity (cargo and bunkers, including fresh water ~~and stores~~ not exceeding ~~one-and-one-half percent of ship's deadweight capacity~~, and constants

allowing a minimum of fifty tons) on a draft of 28 feet 1-1/4 inches on Summer freeboard, inclusive of permanent bunkers,

which are of the capacity of about tons of fuel, and capable of steaming, fully laden, under good weather

conditions about 1 knots on a consumption of about 19 tons of ~~best Welsh coal, best grade fuel oil, best grade Diesel oil~~,

now 1000 seconds plus 1/2 diesel oil

and Atlantic & Great Lakes Steamship Corp. Charterers of the City of New York

Witnesseth, That the said Owners agree to let, and the said Charterers agree to hire the said vessel from the time of delivery, for

~~abou~~ minimum 10/maximum 12 months time charter

within below mentioned trading limits. Charterers to have liberty to sublet the vessel for all or any part of the time covered by this Charter, but Charterers remaining responsible for the fulfillment of this Charter Party.

Vessel to be placed at the disposal of the Charterers, at passing Lands End

~~in such dock or at such wharf or place (where she may safely lie, always afloat, at all times of tide, except as otherwise provided in clause No. 6), as the Charterers may direct. If such dock, wharf or place be not available time to count as provided for in clause No. 6.~~ Vessel on her delivery to be ready to receive cargo with clean-swept holds and tight, staunch, strong and in every way fitted for the service, having water ballast, winches and donkey boiler with sufficient steam power, or if not equipped with donkey boiler, then other power sufficient to run all the winches at one and the same time (and with full complement of officers, seamen, engineers and firemen for a vessel of her tonnage), to be employed, in carrying lawful merchandise, including petroleum or its products, in proper containers, excluding See Clause 30 (vessel is not to be employed in the carriage of Live Stock, ~~but Charterers are to have the privilege of shipping a cargo of lumber on deck at their risk, as necessary stowage and free space required for such cargo. Charterers to pay freight on such lumber at the rate stipulated in this Charter Party, and~~ in such lawful trades, between safe port and/or ports ~~and/or Europe and/or Asia and/or Australia and/or Tasmania and/or New Zealand, but excluding Magdalena River, River St. Lawrence between October 31st and May 15th, Hudson Bay and all canada ports, also excluding, when out of season, White Sea, Black Sea and the Baltic.~~ Worldwide trading within Institute Warranty Limits excluding Israel, Vietnam, North and South Korea, Also Cuba unless Greek vessel permitted by Greek government. Charterers option of breaking Institute Warranty Limits on paying of extra insurance.

as the Charterers or their Agents shall direct, on the following conditions:

1. That the Owners shall provide and pay for all provisions, wages and consular shipping and discharging fees of the Crew; shall pay for the insurance of the vessel, also for all the cabin, deck, engine-room and other necessary stores, including boiler water and maintain her class and keep the vessel in a thoroughly efficient state in hull, machinery and equipment for and during the service.

2. That the Charterers shall provide and pay for all the fuel except as otherwise agreed, Port Charges, Pilotages, Agencies, Commissions, Consular Charges (except those pertaining to the Crew), and all other usual expenses except those before stated, but when the vessel puts into a port for causes for which vessel is responsible, then all such charges incurred shall be paid by the Owners. Fumigations ordered because of illness of the crew to be for Owners account. Fumigations ordered because of cargoes carried or ports visited while vessel is employed under this charter to be for Charterers account. All other fumigations to be for Charterers account after vessel has been on charter for a continuous period of six months or more.

Charterers are to provide necessary dunnage and shifting boards, also any extra fittings requisite for a special trade or unusual cargo, but Owners to allow them the use of any dunnage and shifting boards already aboard vessel. Charterers to have the privilege of using shifting boards for dunnage, they making good any damage thereto.

3. That the Charterers, at the port of delivery, and the Owners, at the port of re-delivery, shall take over and pay for all fuel remaining on board the vessel at the current prices in the respective ports, the vessel to be delivered with ~~not less than~~ Charterers Contract 300/400 fuel oil and 45/55 bunkers as on board but always sufficient to reach nearest main bunkering port. ~~tons~~ diesel oil ~~tons~~ and to be re-delivered with ~~not less than~~ ~~tons~~ ~~tons and not more than~~ ~~tons~~.

4. That the Charterers shall pay for the use and hire of the said Vessel at the rate of Four Thousand Two Hundred ($4,200.00) Dollars daily including overtime United States Currency ~~per ton on vessel's total deadweight carrying capacity, including bunkers and stores, on~~ ~~summer freeboard, per Calendar Month~~, commencing on and from the day of her delivery, as aforesaid, and at and after the same rate for any part of a ~~month~~ day; hire to continue until the hour of the day of her re-delivery in like good order and condition, ordinary wear and tear excepted, to the Owners (unless lost) at UK, Continent, Mediterranean or Montreal/Buenos Aires range, including Newfoundland and the West Indies ~~unless otherwise mutually agreed~~. Charterers are to give Owners not less than 15 days notice of vessels expected date of re-delivery, and probable port. and 30 days notice of redelivery area (i.e., Gulf, West Indies, South Atlantic, USNH, East Canada or South America

5. Payment of said hire to be made in New York in cash in United States Currency, semi-monthly in advance, and for the last half month or part of same the approximate amount of hire, and should same not cover the actual time, hire is to be paid for the balance day by day, as it becomes due, if so required by Owners, unless bank guarantee or deposit is made by the Charterers, otherwise failing the punctual and regular payment of the hire, or bank guarantee, or on any breach of this Charter Party, the Owners shall be at liberty to withdraw the vessel from the service of the Charterers, without prejudice to any claim they (the Owners) may otherwise have on the Charterers. ~~Time to cease from 4 p.m. on the working day following that on which written notice of readiness has been given to Charterers or their Agents before 4 p.m., but if required by Charterers, they to have the privilege of using vessel at once, such time used to count as hire.~~

Cash for vessel's ordinary disbursements at any port may be advanced as required by the Captain, by the Charterers or their Agents, subject to 2½% commission and such advances shall be deducted from the hire. The Charterers, however, shall in no way be responsible for the application of such advances.

European American Banking Corp., 52 Wall Street, N.Y., N.Y. 10005. Account Cripps Warburg Ltd. re. M/V "MARY"

6. That the cargo or cargoes be laden and/or discharged in any dock or at any wharf or place that Charterers or their Agents may direct provided the vessel can safely lie always afloat at any time of tide, except at such places where it is customary for similar size vessels to safely lie aground.

7. That the whole reach of the Vessel's Hold, Decks, and usual places of loading (not more than she can reasonably stow and carry), also accommodations for Supercargo, if carried, shall be at the Charterers' disposal, reserving only proper and sufficient space for Ship's officers, crew, tackle, apparel, furniture, provisions, stores and fuel. ~~Charterers have the privilege of passengers as far as accommodations allow, Charterers paying Owners ..... per day per passenger for accommodation and meals.~~ However, it is agreed that in case any fines or extra expenses are incurred in the consequence of the carriage of ~~passengers~~, Charterers are to bear such risk and expense.

Supercargo

8. That the Captain shall prosecute his voyages with the utmost despatch, and shall render all customary assistance with ship's crew and boats. The Captain (although appointed by the Owners), shall be under the orders and directions of the Charterers as regards employment and agency; and Charterers are to load, stow, and trim the cargo at their expense under the supervision of the Captain, who is to sign Bills of Lading for cargo as presented, in conformity with Mate's or Tally Clerk's receipts.

and discharge

9. That if the Charterers shall have reason to be dissatisfied with the conduct of the Captain, Officers, or Engineers, the Owners shall on receiving particulars of the complaint, investigate the same, and, if necessary, make a change in the appointments.

10. That the Charterers shall have permission to appoint a Supercargo, who shall accompany the vessel and see that voyages are prosecuted with the utmost despatch. He is to be furnished with free accommodation, and same fare as provided for Captain's table, Charterers paying at the rate of $2.50 per day. Owners to victual Pilots and Customs Officers, and also, when authorised by Charterers or their Agents, to victual Tally Clerks, Stevedore's Foreman, etc., Charterers paying at the ~~cost~~ rate per meal, for all such victualling of $2.50

$2.50

11. That the Charterers shall furnish the Captain from time to time with all requisite instructions and sailing directions, in writing, and the Captain shall keep a full and correct Log of the voyage or voyages, which are to be patent to the Charterers or their Agents, and furnish the Charterers, their Agents or Supercargo, when required, with a true copy of daily Logs, showing the course of the vessel and distance run and the consumption of fuel.

12. That the Captain shall use diligence in caring for the ventilation of the cargo.

13. ~~That the Charterers shall have the option of continuing this charter for a further period of~~

Charterers to have full Lakes privilege, Charterers paying all costs for fittings in their time and all extra insurance for Lakes trading

ordinary cargo

CABLE ADDRESS "ALBURBANK" SHIP BROKERS A. L. BURBANK & CO STEAMSHIP AGENTS One World Trade Center New York

PYRAMID MARITIME LTD. 2 CREECHURCH LANE LONDON EC3 ENGLAND

~~on giving written notice thereof to the Owners or their Agents ... days previous to the expiration of the first named term, or any declared option.~~

14. That if required by Charterers, time not to commence before June 1, 1974 and should vessel not have given written notice of readiness on or before June 15, 1974 but not later than 4 p.m. Charterers or their Agents to have the option of cancelling this Charter at any time not later than the day of vessel's readiness.

15. That in the event of the loss of time from deficiency of men or stores, fire, breakdown or damages to hull, machinery or equipment, grounding, detention by average accidents to ship or cargo, drydocking for the purpose of examination or painting bottom, or by any other cause preventing the full working of the vessel, the payment of hire shall cease for the time thereby lost; and if upon the voyage the speed be reduced by defect in or breakdown of any part of her hull, machinery or equipment, the time so lost, and the cost of any extra fuel consumed in consequence thereof, and all extra expenses shall be deducted from the hire.

16. That should the Vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be returned to the Charterers at once. The act of God, enemies, fire, restraint of Princes, Rulers and People, and all dangers and accidents of the Seas, Rivers, Machinery, Boilers and Steam Navigation, and errors of Navigation throughout this Charter Party, always mutually excepted.

The vessel shall have the liberty to sail with or without pilots, to tow and to be towed, to assist vessels in distress, and to deviate for the purpose of saving life and property.

17. That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at ~~New York~~ London, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men.

18. That the Owners shall have a lien upon all cargoes, and all sub-freights for any amounts due under this Charter, including General Average contributions, and the Charterers to have a lien on the Ship for all monies paid in advance and not earned, and any overpaid hire or excess deposit to be returned at once. Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the owners in the vessel.

19. That all derelicts and salvage shall be for Owners' and Charterers' equal benefit after deducting Owners' and Charterers' expenses and Crew's proportion. General Average shall be adjusted, stated and settled, according to Rules 1 to 15, inclusive, 17 to 22, inclusive, and Rule F of York-Antwerp Rules 1950, at such port or place in the ~~United States~~ United Kingdom as may be selected by the carrier, and as to matters not provided for by these Rules, according to the laws and usages at the port of ~~New York~~. In such adjustment disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the ship. Average agreement or bond and such additional security, as may be required by the carrier, must be furnished before delivery of the goods. Such cash deposit as the carrier or his agents may deem sufficient as additional security for the contribution of the goods and for any salvage and special charges thereon, shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery. Such deposit shall, at the option of the carrier, be payable in United States money and be remitted to the adjuster. When so remitted the deposit shall be held in a special account at the place of adjustment in the name of the adjuster pending settlement of the General Average and refunds or credit balances, if any, shall be paid in United States money.

1950

London and to be construed under English Law

~~In the event of accident, danger, damage, or disaster, before or after commencement of the voyage resulting from any cause whatsoever,~~ whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract, or otherwise, the goods, the shipper and the consignee, jointly and severally, shall contribute with the carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully and in the same manner as if such salving ship or ships belonged to strangers.

Provisions as to General Average in accordance with the above are to be included in all bills of lading issued hereunder.

20. Fuel used by the vessel while off hire, also for cooking, condensing water, or for grates and stoves to be agreed to as to quantity, and the cost of replacing same, to be allowed by Owners.

21. ~~That such vessel may be from time to time employed in tropical waters during the term of this Charter. Vessel is to be docked at a convenient place, bottom cleaned and painted whenever Charterers and Captain think necessary, at least once in every six months, reckoning from time of last painting, and payment of the hire to be suspended until she is again in proper state for the service.~~

Vessel to be drydocked at least once per year at a time and place to be mutually agreed.

22. ~~Owners shall maintain the gear of the ship as fitted, providing gear for all derricks capable of handling lifts up to three tons, also providing ropes, falls, slings and blocks. If vessel is fitted with derricks capable of handling heavier lifts, Owners are to provide necessary gear for same, otherwise equipment and gear for heavier lifts shall be for Charterers' account.~~ Owners also to provide on the vessel lanterns and oil for night work, and vessel to give use of electric light when so fitted, but any additional lights over those on board to be at Charterers' expense. The Charterers to have the use of any gear on board the vessel.

23. Vessel to work night and day, if required by Charterers, ~~and all winches to be at Charterers' disposal during loading and discharging;~~ steamer to provide one winchman per hatch to work winches day and night, as required, Charterers agreeing to pay officers, engineers, winchmen, deck hands and donkeymen for overtime work done in accordance with the working hours and rates stated in the ship's articles. If the rules of the port, or labor unions, prevent crew from driving winches above [illegible] and to be paid by Charterers. In the event of a disabled winch or winches, or insufficient power to operate winches, Owners to pay for shore [illegible] or engines, in lieu thereof, if required, and pay any loss of time occasioned thereby.

24. It is also mutually agreed that this Charter is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States approved on the 13th day of February, 1893, and entitled "An Act relating to Navigation of Vessels, etc.," in respect of all cargo shipped under this charter to or from the United States of America. It is further subject to the following clauses, both of which are to be included in all bills of lading issued hereunder:

U. S. A. Clause Paramount

This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading be repugnant to said Act to any extent, such term shall be void to that extent, but no further.

~~Both-to-Blame Collision Clause~~

~~If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier.~~

~~26. The vessel shall not be required to enter any ice-bound port, or any port where lights or light-ships have been or are about to be withdrawn by reason of ice, or where ice is such that in the ordinary course of things the vessel will not be able on account of ice to safely enter the port or to get out after having completed loading or discharging.~~

26. Nothing herein stated is to be construed as a demise of the vessel to the Time Charterers. The owners to remain responsible for the navigation of the vessel, insurance, crew, and all other matters, same as when trading for their own account.

27. A commission of 2½ per cent is payable by the Vessel and Owners to A. L. Burbank & Company Ltd., for equal division with Pyramid Maritime Limited also 1-1/4% to P. Wigham-Richardson & Company, Ltd, on hire earned and paid under this Charter, and also upon any continuation or extension of this Charter.

28. An address commission of ~~2½~~ 1-1/4 per cent payable to Charterers on the hire earned and paid under this Charter.

By cable authority from

Clauses Nos. 29 through 43, both inclusive, as per rider attached, are to be considered part of this Charter.

The original Charter Party in our possession.

BROKERS.

SIGNED UNDER ~~TELEGRAPHIC~~ ~~TELEPHONIC~~ AUTHORITY

FROM AND AS BROKERS FOR OWNERS

P. WIGHAM-RICHARDSON & Co., LIMITED.

DIRECTOR.

AS BROKERS ONLY.

ATLANTIC AND GREAT LAKES STEAMSHIP CORPORATION

Sarah J. Williams

P. WISHAM-RICHARDSON & CO. LTD
ARMADORES HOUSE
BURY STREET, LONDON, E.C.3

RIDER TO CHARTER PARTY DATED MAY 3, 1974
M/S "MARY"

29. Hold cleaning to be performed by crew if regulations permit at a bonus of $500 for each occasion. If time between discharging and next loading is insufficient for crew to perform adequate cleaning and shore labor is necessary, such shore labor is to be for time charterers' account.

30. Cargo exclusions are logs, livestock, injurious and/or inflammable cargoes, arms, ammunitions, explosives, nitrate, pitch and asphalt in bulk, also motor blocks.

31. Charterers' privilege of breaking IWL in which case extra insurance for so doing to be for Charterers' account.

32. With further reference to Clause 18 - In no event shall Charterers procure or permit to be procured for the vessel, any supplies, necessaries or services without previously obtaining a statement signed by an authorized representative of the furnisher thereof acknowledging that such supplies, necessaries or services are being furnished on the credit of charterers and not on the credit of the vessel or of her Owners, and that the furnishers claim no maritime lien on the vessel thereof.

33. The vessel not to be ordered to nor bound to enter any ice-bound place or any place where lights, lightships, marks and buoys are or are likely to be withdrawn by reason of ice on the vessel's arrival or where there is risk that ordinarily the vessel will not be able on account of ice to reach the place or to get out after having completed loading or discharging. The vessel not to be obliged to force ice. If, on account of ice, the Master considers it dangerous to remain at the loading or discharging place for fear of the vessel being frozen in and/or damaged, he has liberty to sail to a convenient open place and await the Charterers' fresh instructions. Unforeseen detention through any of above causes to be for Charterers' account.

34. All damages to vessel caused by stevedores during loading and/or discharging to be repaired at Charterers' expense before redelivery unless otherwise agreed. Charterers not responsible for stevedoring damages to vessel if Master fails to notify stevedores and Charterers in writing at time of occurrence of damage. Master to cooperate by establishing responsibility in writing of party causing damage.

35. A joint "off-hire" survey to be held on redelivery at Charterers' time and expense. Costs of agreed joint surveyors being shared 50/50. On-hire survey to be held on arrival of first load port with expenses equally shared.

36. If steel cargoes are carried, Owners to have the liberty of appointing their own surveyor at both loading and discharging ports at their expense.

37. Owners guarantee that vessel is not blacklisted by any Arab country nor by the International Longshoremen's Association due to previous Cuba trading.

38. Any off-hire time by reasons contained in Clause 15, Charterers' privilege to add the off-hire to vessel's period under the time charter.

P. WIGHAM-RICHARDSON & CO. LTD.
ARMADORES HOUSE
BURY STREET, LONDON, E.C.3

RIDER TO CHARTER PARTY DATED MAY 3, 1974
M/S "MARY"

39. If vessel calls at any U.S. port for purpose of loading or discharging cargo and/or embarking or disembarking passengers, vessel's equipment shall comply with regulations established by U.S. Public Law 85-742, Part 9 (Safety and Health Regulations for Longshoring). If longshoremen are not permitted to work due to failure of the Master and/or Owners and/or Owners' agents to comply with the aforementioned regulations, any delay resulting therefrom shall be for Owners' account.

40. Any increase over present war risks insurance and/or crew bonus to be for time charterers' account.

41. Charterers have the liberty to sublet this time charter per lines 16/17; however, any sublet charter to conform with the terms and conditions of this Charter Party, failing which time charterers to be responsible notwithstanding Clause 8.

42. Description of the M/S "MARY":
Gearless ore carrier, Greek flag, built 1957
14,783 TDW on 28' 1-1/4", cubic 374,786.
Otherwise sister ship to the "Filia" including speed and consumption.

43. New Jason Clause, New Both-to-Blame Collision Clause, Canadian Clause Paramount and Chamber of Shipping War Risk Clauses 1 and 2, as attached, to be deemed fully incorporated in this Charter Party and to be fully incorporated in all Bills of Lading.

CANADIAN CLAUSE PARAMOUNT:

"This [illegible], so far as it relates to the carriage of goods by wa[illegible] shall have effect, subject to the provisions of the [illegible] carriage of [illegible]ds Act 1936, enacted by the Parliament of the Dominion of Canada, which shall be deemed to be incorporated herein and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under the said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such terms shall be void to that extent, but no further."

NEW JASON CLAUSE:

"In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the Carrier is not responsible by statute, contract or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the Carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods.

"If a salving ship is owned or operated by the Carrier, salvage shall be paid for as fully as if such salving ship or ships belonged to strangers. Such deposit as the Carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the Carrier before delivery."

NEW BOTH TO BLAME COLLISION CLAUSE:

"If the liability for any collision in which the vessel is involved while performing this Bill of Lading fails to be determined in accordance with the laws of the United States of America, the following clause shall apply:

> "If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier."

The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contract.

WAR RISK CLAUSES:

"1. No Bills of Lading to be signed for any blockaded port and if the port of discharge be declared blockaged after Bills of Lading have been signed, or if the port to which the ship has been ordered to discharge either on signing Bills of Lading or thereafter be one to which the ship is or shall be prohibited from going by the Government of the Nation under whose flag the ship sails or by any other Government, the owner shall discharge the cargo at any other port covered by this Charterparty as ordered by the Charterers (provided such other port is not a blockaded or prohibited port as above mentioned) and shall be entitled to freight as if the ship had discharged at the port or ports of discharge to which she was originally ordered.

"2. The Ship shall have liberty to comply with any orders or directions as to the departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the vessel sails or any department thereof, or any person acting or purporting to act with the authority of such Government or of any department thereof, or by any committee or person having, under the terms of the War Risks Insurance on the ship, the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done, the same shall not be deemed a deviation, and delivery in accordance with such orders or directions shall be a fulfillment of the contract voyage and the freight shall be payable accordingly."

C.S.U.K., London - 26th September, 1935.

Plaintiff's Exhibit 2.

Telex, dated November 20, 1974, 1925 hrs.

(See opposite page.) ☞

BURBANK NY

1974 NOV 21 AM 11 44

ANTRASHIP MTL
MTL NOV 20/74 1925

ATT MR PETTERSEN

WE CONFIRM HAVING FIXED TODAY AS FOLLOWS ACC TIDEWATER TERMINALS INC

MV MARY GREEK FLAG BLT 57
14783 DWAT
GLESS ORECARRIER, BRIDGE BETWEEN HATCHES 2 AND 3, ENG AFT
5 HOLDS/HATCHES BUT CARGO ONLY TO BE LOADED IN HATCHES 2-5
HATCHSIZES 2-5 IS 61'4" X 34"
374000 CFT CLEAR IN MAINHOLDS 2-5

9375 LT MINMAX SHREDDED SCRAP STOWING MAX 40/LT
1 SB JACKSONVILLE/1 SB CHIMBOTE
NOV 27/DEC 9 (PRESENT ETA NOV 28)
2500 LT LOAD/800 LT DISCH ALL PER WWDSHEX EIU
US 29,25 PER LT FIOT, 95 PCT PPD
4500 DEM/HD LTS
NEGOTIATIONS AND EVENTUAL FIXTURE TO BE KEPT STRICTLY
CONFIDENTIAL
SUB RECEIVERS APPR OF VESSEL LATEST 1600 HOURS NOV 21
OWISE GENJAPSCRAP SUB DETS 3,75 TTL HERE

BURBANK NY

ANTRASHIP MTL

Plaintiff's Exhibit 3.

Telex, dated November 20, 1974, 1950 hrs.

Antraship MTL
MTL Nov 20/74 1950

Att Mr Avramides

We confirm having fixed today as follows Acc Tidewater Terminals Inc
MV Mary Greek Flag BLT 57
14783 DWAT
Gless ore carrier, bridge between hatches 2 and 3, eng aft
5 holds/hatches but cargo only to be loaded in hatches 2-5
Hatchsizes 2-5 is 61'4" x 34"
374000 Cft clear in mainholds 2-5
9375 Lt Minmax shredded scrap stowing max 40/Lt
1 SB Jacksonville/1 SB Chimbote
Nov 27/Dec 9 (present ETA Nov 28)
2500 Lt load/822 Lt Disch all per wwdshex ETA
US 29,25 per Lt Fiot, 95 Pct Ppd
4500 Dem/Hd Lts
Negotiations and eventual fixture to be kept strictly confidential
Sub receivers appr of vessel latest 1600 hours NOV 21
Owise Genjapscrap Sub Dets 3,75 Ttl here

STEELMET NYK

Plaintiff's Exhibit 4.

Charter Party, dated November 8, 1972.

(See opposite page.) ☞

KIRWIN EXHIBIT 9
FOR IDENTIFICATION
1/20/76 P. COLLINS

RECOMMENDED

Adopted by the Documentary Committee of the Chamber of Shipping of the United Kingdom

CODE NAME: Gencon.

Issued in some date form for charters on and after 15th September 1922

The Documentary Council of The Baltic and White Sea Conference

GENJAPSCRAP UNIFORM GENERAL CHARTER

AS REVISED 1922

Only to be used for trades for which no approved form is in force

GORDON-SHALLEY CORP.
137 EAST 55TH ST.
NEW YORK, N. Y. 10015

New York, N.Y. November 8 1972

1. It is this Day mutually agreed between GORDON-SHALLEY CORPORATION As Disponent Owners of the 10405/6180 "ATLANTIC FREEDOM" (Cont. 2 [illegible]) of [illegible] tons Gross Register and carrying about [illegible] tons Deadweight on Load Line Draft and expected ready to load under this Charter about [illegible] and Master STEELMET EXPORT COMPANY of Charleston, S.C. as Charterers. That the said vessel being presently in [illegible] or so near thereunto as she may safely get and be always afloat, and there being a full and complete cargo if shipment of dock cargo agreed shall be at Charterers' risk of

Comprising Providence

Cargo: HEAVY HANDY DEADWEIGHT SCRAP AND/OR MOTORBLOCKS EXCLUDING TURNINGS

(Charterers to provide at their sole cost and risk dunnage and any assistance required. The Owners allowing the use of any dunnage wood on board if required which the Charterers had therein free to carry and being so loaded the vessel shall proceed to [illegible]

Destination: [illegible] Barcelona, Spain

Freight: [illegible] ONE HUNDRED SEVENTY-FIVE THOUSAND [illegible] DOLLARS ($175,000.00) [illegible] ports, [illegible] Barcelona [illegible] additional [illegible] to be prepaid within seven [illegible] after completion of loading and receipt of [illegible] Bills of Lading, Charterers' [illegible] balance payable on completion of [illegible] and/or cargo lost or not lost.

FOUR THOUSAND DOLLARS ($4,000.00)

Full freight to be deemed earned after full cargo loaded on board vessel discountenance and non-recoverable, vessel and/or cargo lost or not lost.

Owners Responsible for Loading/Stowing: [illegible]

Owners Responsible for Trimming: [illegible]

Lay Days: [illegible] Charterers

TWO THOUSAND DOLLARS ($2,000.00)

Demurrage: [illegible]

Bills of Lading: [illegible]

Bills of Lading Signed: [illegible]

Cancelling: [illegible] November 22, 1972.

Perhaps, if required by the shipowners, not to exceed before Dec. 15, 1972 (Charterers have the option of extending the cancelling date if required by the shipowners, but should the freight by reason thereof be increased, such increase to be borne by the Charterers).

General Average: [illegible]

Brokerage: [illegible]

General Strike Clause: In case Charterers declining to extend lay days as in the above, the Owners will have the option to declare in writing within 48 hours after they cancel Charter Party or will have vessel wait until end of strike.

General War Clause: [illegible]

Port of Loading: [illegible]

Port of Discharge: [illegible]

Clauses Nos. 15 to 47, both inclusive, as attached hereto, are to be considered fully incorporated in this Charter Party.

GORDON-SHALLEY CORPORATION
As Disponent Owners

STEELMET EXPORT COMPANY

BY: [illegible]

and 5 days' notice of definite readiness to load

RIDER TO CHARTER PARTY DATED NOVEMBER 8, 1972
M.V. "ATLANTIC FREDDOM"

16. Charterers have the privilege of shifting to other berths each port, both ends, all shifting expenses to be for Charterers' account and full time shifting to count as laytime; however, officers and crew overtime and fuel consumed to be for Owners' account.

17. Cargo is to be loaded, stowed and discharged by the Charterers, free of expense to the vessel. trimmed twenty (20)

18. Cargo is to be loaded, stowed and discharged within a total of ~~seven (7) consecutive~~ weather working days of 24 hours, Sundays and holidays excepted even if used. If longer detained, Charterers to pay demurrage at the rate stipulated in Clause 7 and payments to be made in the same currency as freight payment. If vessel despatched, Owners to pay despatch at the rate of One Thousand Sixty (1,060.00) Dollars per day or pro rata for part of a day on laytime saved both ends and payments to be made in the same currency as freight payment. Charterers' privilege to deduct brokerage and undisputed despatch from freight. trimmed

19. Time from noon Saturday until 8.00 A.M. Monday not to count, even if used. Time from midnight preceding holiday until 8.00 A.M. the day after holiday not to count even if used.

20. At first load port and at discharge, time to count 6 hrs after due notice given, whether vessel in berth or not; notice of readiness to be given in writing within office hours.

21. Owners to give 14, 10 and 7 days' notice of estimated readiness to load ~~at first load port~~ ~~and 48 hours notice thereafter, if any, and regular notice of ranges loading ports ahead and to forward. Orders for first loading port to be given by Charterers and for subsequent ports to be given latest when vessel already six (6) hours off Cape Hatteras. Orders for second loading and/or second or subsequent discharging port to be given latest when vessel already six (6) hours off Cape Hatteras and/or discharging port to be given latest when vessel already six (6) hours off Cape Hatteras.~~

22. Vessel to wireless Charterers' agents at loading and discharging ports, giving 96 hours' notice of expected time of arrival; also 48 hours' final notice of arrival to be given to Charterers' agents at loading and discharging ports.

23. Owners guarantee ~~vessel's hold and equipment not excluding 1 deckers, Understood initially suitable~~ minimum/maximum 14,000 tons F.O.B.S.T., deadweight for cargo and ~~bunkers~~ 723,000 cubic feet ~~bale capacity, including 2 deckers, to be accepted but if not called, amounting to be for Owners' account but if and if acceptance to be accepted but if not called, amounting to be for Owners' account.~~

24. The vessel has two (2) decks and five (5) hatches, except for No. 1 hold which has third deck. Charterers' privilege to work all hatches at all times; ~~using~~ winches and ~~using~~ derricks at each hatch in ~~certain~~ good working condition. Ship to give free use of steam and winches at all times and supply light for night work, if required, free of expense to Charterers. Derricks have a capacity of ~~five~~ 3/5 tons each.

25. Vessel to render clear of sweat battens and any obstacles that might be hindering the loading and discharging of scrap including trimming hatch covers and ladders. Tanktops, tunnels, exposed cables and pipes to be entirely and properly protected by the vessel against the hazards normally connected with a scrap cargo. Broken or split boards, cargo battens, dunnage and loose protection on tanktops not to be considered as proper protection. Charterers not to be responsible for damages to sweat battens, hatch covers and trimming hatch covers and any object if stored in such a way that they are exposed to contact with the cargo. Charterers not to be responsible for damages to ladder brackets and batten clips removable or unremovable. Warranted wooden bulkhead sheathing and landing pads on tanktops to be in good condition. two two

26. Vessel to furnish a certified calibration scale for all tanks, including fore and after peak and double bottom tanks and deeptanks. Plimsoll marks amidships and draft marks on port and starboard side, bows and sterns, to be clearly cut and marked on shell plating. Vessel to furnish capacity plan, displacement scale, and deadweight scale and same to be certified by Master, as to the correctness at time of loading.

27. Use of hatch beams and hatch covers between lower holds and 'tweendecks generally at the discretion of ship's Captain with the exception of such instances where the beams and covers are necessary for cargo separation purposes, and where their use is requested by Charterers/Shippers. All hatch beams to be individually lined up on deck before arrival at loading port for identification and inspection.

28. Stevedoring overtime to be for account of party ordering same; however, officers' and crew overtime always to be for Owners' account.

available for cargo - no deeptanks, bunker spaces, sidecasings or stanchions.

At second load port, time to count from arrival, whether in berth or not.

29. At loading and discharge ports, charter on vessel ~~and at liberty or vessel if no charge to be for vessel's account and charter on cargo to be for Charterers' account.~~ ~~At loading ports and/or ports thereof, if vessel to be ordered to be ready to load, to be ready to load and/or ready to be ready to be ready to be

WAR RISKS CLAUSE

"1. No Bills of Lading to be signed for any blockaded port and if the port of discharge be declared blockaded after Bills of Lading have been signed, or if the port to which the ship has been ordered to discharge either on signing Bills of Lading or thereafter be one to which the ship is or shall be prohibited from going by the Government of the Nation under whose flag the ship sails or by any other Government, the owner shall discharge the cargo at any other port covered by this Charterparty as ordered by the Charterers (provided such other port is not a blockaded or prohibited port as above mentioned) and shall be entitled to freight as if the ship had discharged at the port or ports of discharge to which she was originally ordered.

"2. The ship shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the vessel sails or any department thereof, or any person acting or purporting to act with the authority of such Government or of any department thereof, or by any committee or person having, under the terms of the War Risks Insurance on the ship, the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done, the same shall not be deemed a deviation, and delivery in accordance with such orders or directions shall be a fulfilment of the contract voyage and the freight shall be payable accordingly."

C.S.U.K., London—26th September, 1935

Form No. 180 Printed and Sold by Unz & Co., New York U 26194

BOTH TO BLAME COLLISION CLAUSE.

If the liability for any collision in which the vessel is involved while performing this Bill of Lading falls to be determined in accordance with the laws of the United States of America, the following clause shall apply:—

If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier.

The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

1948 Revision—Form 185 Sold by Unz & Co., Inc., 24 Beaver St., N.Y.

NEW JASON CLAUSE: In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the carrier is not responsible, by statute, contract, or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if such salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery.

NST—March, 1941 Form No. 163—Printed and Sold by Unz & Co., N. Y. U 37783

U. S. A. CLAUSE PARAMOUNT

This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading be repugnant to said Act to any extent, such term shall be void to that extent, but no further.

Form No. 174 Printed and Sold by UNZ & CO., 24 Beaver St., New York—U 10662

PROTECTION & INDEMNITY BUNKERING CLAUSE

The vessel in addition to all other liberties shall have liberty as part of the contract voyage and at any stage thereof to proceed to any port or ports whatsoever whether such ports are on or off the direct and/or customary route or routes to the ports of loading or discharge named in this Charter and there take oil bunkers in any quantity in the discretion of owners even to the full capacity of fuel tanks, deep tanks and any other compartment in which oil can be carried whether such amount is or is not required for the chartered voyage.

January 2nd, 1948 Form 179 Unz & Co., Inc., 24 Beaver St., N. Y. U43215

Plaintiff's Exhibit 5.

Excerpts from Lloyd's register of shipping.

(See opposite page.) ☞

5[illegible]21	MARY
SYAF	exDunc
	Compa
Df Esd	Pothitos
Gc Pfd	Piræus
Rdr	
RTm	

5297103	AGIOS
SZXM	exRiver A
2415	Compan
Df Esd	Delagi
Gc Rdr	Valmas S
RT	Piræus

5255507	GOOD T
5B2191	exNordla
367229	Good Tr
Df Esd	Famagust
Gc Pfd	
Rdr RT	

5030945	AURIVA
SMFU	
10118	Grängos A
Df Esd	Shipping
Gc Pfd	Stockholm
Rdr	
RTm/v	

6303739	PRC.
FNUY	
	Société
Df Esd	S.A.
Gc Rdr	& Un
	Société
	(Anc
	Caen

[illegible]	**MARY**	*10687*	✠100A1	SS 3/71	1957-3 Lithgows Ltd.—P.Gl	M Ore Carrier Mchy.aft	Oil 2SA 4Cy. 670×2320 mm
SYAF	exDuncraig-73	*4494*	ore carrier		505' 1" 69' 0" 23' 1"	5 Ho 63¼', 71½', 71½', 71½', 34¾'	4500bhp Doxford (hvf)
	Compania Reginald S.A.	14783	✠LMC		480' 0" 68' 9" 36' 3"	B.374785	D. Rowan & Co. Ltd. Gls
Df Esd	Pothitos Shipping Co. S.A.				P99' B27' F57' 1 dk	5 Ha (stl) (61', 61', 61', 61'×33½')	2AuxB 150fb
Gc Pfd	Piræus Greek			EL ††2½"SQ	RW 8BH	(13½'×20')	3×80kW 220V d.c. 12k
Rdr					rf 4" WB11545t incl. DTm1116t	Der 2(5)	
RTm							

5297103	**AGIOS NICOLAOS IV**	11558	✠100A1	SS 9/70	1952-11 Lithgows Ltd.—P.Gl	M Bulk Carrier Mchy.aft	Oil 2SA 4Cy. 670×2320 mm
SZXM	exRiver Afton-65	5603			513' 0" 69' 6" 30' 9"	8 Ho 23', 23½', 48', 43', 48', 48',	4500bhp Doxford 1035t
2415	Compania Naviera	16550	✠LMC		485' 8" 69' 3" 39' 0"	48', 48'	D. Rowan & Co. Ltd. Gls
Df Esd	Delagrazia S.A.				P112' F40' 1 dk	G.716702	2AuxB 150fb
Gc Rdr	Valmas Shipping Ltd.			EL ††2 3/16"SQ	RW NS 7BH	8 Ha (stl) (11½'×20') (16', 34¾', 34¾',	3×120kW 220V d.c. 12½k
RT	Piræus Greek				WB3340t	34¾', 34¾', 34¾', 32'×30')	
						2W Der 2(5)	

5255507	**GOOD TRADER**	10739			1958 Kaldnes M/V A/S—Tbg	M Ore Carrier Mchy.aft	Oil 2SA 4Cy. 670×2320 mm
5B2191	exNordland-72	6333			505' 0" 64' 0" 30' 1½"		4500bhp Doxford 15951 (hvf)
367229	Good Trader Nav. Co. Ltd.	16400		BV NV	473' 0" 63' 10" 39' 0"	G.424800	Marinens Hovedverft Horten
Df Esd	Famagusta Cyprus				P109' F54' 1 dk	1 Ha (stl) (16'×14½')	4×184, 184, 184, 60kW 440V 60c/s a.c.
Gc Pfd						6 Ha (stl) (each 34'×29')	11¾k
Rdr RT					rf 2"	2W Der 1(5) 1(3)	

5020945	**AURIVAARA**	10673	✠100A1	SS 3/70	1951-2 A/B Götaverken—Got	M Ore Carrier Mchy.aft	Oil 2SA 7Cy. 680×1500 mm
SMFU		4661	ore carrier		490' 0" 64' 2" 31' 5½"	5 Ho 39¼', 39¼', 78¾', 78¾', 78¾'	4000bhp 1367t (hvf)-20pd
10118	Grängens A/B (Gränges	15870	Str. nav. Ice		461' 3" 64' 0" 42' 6"	G.000000 B.000046	A/B Götaverken Got
Df Esd	Shipping)		✠LMC		P97' F46' 1 dk	5 Ha (stl) (each 29¾'×27¾')	AuxB 85fb e(ex.g) 85fb
Gc Pfd	Stockholm Swedish			EL e†2½"SQ	8BH	Der 1(5)	3×165kW 450V 50c/s a.c. 14k
Rdr					rf 1" DK fwd WB8004t incl. Comb.		
RTm/v					btm STs in holds 6485t DT1698t		

6303739	PRC. [illegible]HÉE	7251			1957 At. & Ch. de Nantes (Bretagne-Loire)—Nts	M Bulk Carrier Mchy.aft	2 Oil 4SA each 8Cy. 400×460 mm
FNUY		3644				Str. ore cargoes	geared to sc. shaft
	Société Navale Caennaise	9929		BV	465' 6" 26' 4"	4 Ho	7440bhp Pielstick
Df Esd	S.A. (Anct. G. Lamy & Cie.)				435' 5" 58' 5" 34' 0"	G.440729 B.420246	Ch. de l'Atlantique SLN
Gc Rdr	& Union Navale				1 dk	4 Ha (44¼', 48¼', 44¼', 48¼'×26¼')	15[illegible]
	Société Navale Caennaise S.A.					Der 1(50) 3(15)	
	(Anct. G. Lamy & Cie.)						
	Caen French						

Plaintiff's Exhibit 6.

Telex, dated November 21, 1974.

(See opposite page.) ☞

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ITT 11 21 1700

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ACRELAK 4217943540103+

325ITT G22.08

CPV 3540103

ATLANTIC AND GREAT LAKES S/S - NY - TELEX 421794

NOV 21, 1974

AS U KNOW WE HV RECENTLY CONCLUDED A CONTRACT WITH UR GOOD SELVES TO CARRY CONCENTRATES FROM CALLAO/PERU TO KOKKOLA/FINLAND AND WE HV USED UR FIRM AS AGENTS IN THE PAST.

WE HV TODAY FIXED OUR ORE CARRIER M/S 'MARY' TO TIDEWATER TERMINAL INC OF PROVIDENCE, RHODE ISLAND, A SUBSIDIARY OF STEELMET ON A CARGO OF 9375 TONS SHREDDED SCRAP FROM JACKSONVILLE TO CHIMBOTE NOV 28/DEC 9.

ONLY SUBJECT ON THIS FIXTURE WAS SUBJECT TO RECEIVERS APPROVAL OF VESSEL WHICH WE ARE JUST NOW INFORMED HAS BEEN WITHHELD.

MARY IS SIMILARTO FILIA/AGIOS NICOLAOS IV/GOOD TRADER ALL OF WHICH HV TRADED FOR OUR ACCOUNT IN UR AREA SHE IS A GEARLESS ORE CARRIER WITH FOUR HOLDS/FOUR HATCHES HATCH SIZES ALL 61 FT 4 IN BY 34 FT. MACHINERY IS ALL AFT LOA 505 FT BEAM 68 FT 9 IN DRAFT ON ARRIVAL AFT 22 FT 6 INCHES.

WE ARE UNABLE TO UNDERSTAND WHY SUCH A VSL SHUD NOT BE APPROVED SINCE SHE IS IDEAL FOR SUCH TRADE AND HAS BEEN USED EXTENSIVELY BY US IN SIMILAR TRADES.

PLS CONTACT RECEIVERS ON OUR BEHALF AND CLARIFY THIS SITUATION PROMPTLY THANKS IN ADVANCE+

•

CPV 3540103+

ACRELAK 421794

WELL RECVD TKS DIPI

DIPI+B

11/21/74 1704EST 0[illegible]

Plaintiff's Exhibit 7.

Telex, dated November 26, 1974.

(See opposite page.) ☞

RECEIVED-N.Y.
1974 NOV 26 AM 10: 14

9

11/26/74 1011 EST+

ACPELAK 421794

CPV 3540103

TO: ATLANTIC AND GREAT LAKES, NEW YORK

NOV 26TH, 1974

M/S MARY - 9375 TONS SHREDDED SCRAP JAXONVILLE/CHIMBOTE

HAVE BEEN TRYING CONTACT RECEIVERS IN PERU: SIDERPERU SINCE FRIDAY SUCCEEDING ONLY TODAY.

RECEIVERS OF CARGO INFORM THEY HAVE PURCHASED C AND F THEREFORE DO NOT INTERVENE IN FIXTURE OF VESSEL.

PLEASE CONTACT SHIPPERS ASAP ORDER SECURE THIS CARGO.

PLS ADV OUTCOME.

VARGRUANA

HOW RECVD PLS+?+

ACPELAK 421794

CPV 3540103+

ACPELAK 421794V

Plaintiff's Exhibit 8.

Telex, dated November 27, 1974, 1528 hrs.

(See opposite page.) ☞

RECEIVED-N.Y.
1974 NOV 27 PM 3:30

ITT 11 27 1528

+

AGRELAK 4217943540103+

331ITT G20.25

CPV 3540103

ATLANTIC AND GREAT LAKES S/S - NY - NOV 27

MARY...9375 TONS SHREDDED SCRAP JACKSONVILLE/CHIMBOTE:

THANKS URTEL NOV 26TH RE SIDERPERU. WOULD YOU PLS ASK

SIDERPERU TO CFM TO US BY TELEX THAT

AAA) THEY WERE NOT C ASKED TO APPROVE MARY AND

BBB) THAT THEY WOULD HAVE APPROVED VSL IF ASKED.

PLS GIVE THIS UR URGENT ATTENTION. THANKS+++

WILL RECD PLS

OK ALL WELL RECD WILL REVERT S AS SOONEST BIBI

KAY WUD APPREC REPLY TODAY BI FOR NOW+

CPV 3540103

V

11/27/74 1530EST 001.9

Plaintiff's Exhibit 9.

Telex, dated November 27, 1974, 1651 hrs.

(See opposite page.) ☞

RECEIV -N.Y.
1974 NOV 27 PM 4:54

11/27/74 1651 EST+

AGRELAK 421794

CPV 3540103

TO: ATLANTIC AND GREAT LAKES, NEW YORK

NOV 27TH, 1974

MARY: 9375 TONS SHREDDED SCRAP JAXNVILLE/CHIMBOTE

RE YOURTEL TODAY SIDERPERU INFORM:

AAA) THEY WERE NEVER ASKED FOR APPROVAL M/S MARY SINCE THEIR PURCHASE WAS C AND F

BBB) CASE THEY WOULD HVE BEEN CONSULTED THEY WOULD HVE NOT OBJECTED THE VESSEL ON THE LIGHT OF DECREE NR. 20759 BECAUSE THEIR PURCHASE WAS EFFECTED IN SEPTEMBER AND MENTIONED DECREE IS DATED OCTOBER AND WITHOUT RETROACTIVE EFFECTS.
AS LONG AS VESSEL WOULD HAVE COMPLIED WITH PERUVIAN REGULATIONS IN FORCE REGARDING TRANSPORTATION BY SEA THEY WOULD HAVE NOT OBJECTED THE VESSEL

VAPORUANA

NOW RECVD PLS+?+

AGRELAK 421794

WELL RECD TKS ANF BI FOR NOW MY TKS AGAIN+

[illegible]

Plaintiff's Exhibit 10.

Charter Party, dated September 7, 1974.

(See opposite page.) ☞

PLF. ~~DEF.~~ WIT. VA. EX. M IN EV FOR ID

Feb 3/76

Form 138—Printed in U.S.A. and Sold by Uno & Co., Inc., 24 Beaver St., New York U 48009

Time Charter

GOVERNMENT FORM

Approved by the New York Produce Exchange

November 6th, 1913—Amended October 20th, 1921; August 6th, 1931; October 3rd, 1946

This Charter Party, made and concluded in MONTREAL 7th day of September 19 74

Between SOCIETE NAVALE CAENNAISE

Owners of the good French ~~Steamship~~ Motorship PROMETHEE of CAEN

of 7291 tons gross register, and 3644 tons net register, having engines of 12960 indicated horse power

and with hull, machinery and equipment in a thoroughly efficient state, and classed Bureau Veritas

at of about 420,000 cubic feet bale capacity, and about 10,389 Metric tons of ~~2240 lbs~~

deadweight capacity (cargo and bunkers, including fresh water and stores not exceeding one and one-half percent of ship's deadweight capacity,

allowing a minimum of fifty tons) on a draft of 26 feet 10,5 inches on Salt Summer freeboard, inclusive of permanent bunkers,

which are of the capacity of about tons of fuel, and capable of steaming, fully laden, under good weather

conditions about 15.5 knots on a consumption of about 23 tons of ~~best Welsh coal, that grade for which a bunker Diesel oil~~ fuel oil 1500 secs. plus 1.5 tons Diesel oil

now trading

and TIDEWATER TERMINAL INCORPORATED Charterers of the City of PROVIDENCE, Rhode Island

free and available for cargo on delivery

Witnesseth, That the said Owners agree to let, and the said Charterers agree to hire the said vessel, from the time of delivery, for about minimum three (3) months, maximum five (5) months Time Charter trading within Atlantic Basin including lakes, Mediterranean, Baltic, U.S. Gulf, Caribbean within below mentioned trading limits, Charterers to have liberty to sublet the vessel for all or any part of the time covered by this Charter, but Charterers remaining responsible for the fulfillment of this Charter Party. Acceptance of delivery shall not consitute any waiver of Owners' obligations hereunder.

Vessel to be placed at the disposal of the Charterers, at forty-eight (48) hours after passing off Cape Finisterre.

any permissable

~~In such dock or at such wharf or place (where she may safely lie, always afloat, at all times of tide, except as otherwise provided in clause No. 6), as the Charterers may direct. If such dock, wharf or place be not available time to count as provided for in clause No. 6.~~ Vessel on her delivery to be ready to receive cargo with clean-swept holds and tight, staunch, strong and in every way fitted for the service, having water ballast, winches and donkey boiler with sufficient steam power, or if not equipped with donkey boiler, then other power sufficient to run all the winches at one and the same time (and with full complement of officers, seamen, engineers and firemen for a vessel of her tonnage), to be employed, in carrying lawful merchandise, including petroleum or its products, in proper containers, excluding See Clause 29

with inspection certificates necessary to comply with current requirements at ports of call for and during the service

~~(vessel is not to be employed in the carriage of liner cargo, but Charterers are to have the privilege of shipping a small number of deck passengers at their risk, all necessary stores and other requirements to be at Charterers' expense), between safe port and/or ports in British North America, and/or Central America, and/or Caribbean Sea, and/or Gulf of Mexico, and/or South America, and/or Great Lakes of North America, and/or Europe and/or Africa, and/or Asia, and/or Australia, and/or Tasmania, and/or New Zealand, but excluding Magdalena River, River Orinoco between October 31st and May 16th, Hudson Bay and all Canada ports, also excluding, when out of season, White Sea, Black Sea and the Baltic,~~

as provided above, but excluding Israel, Cuba, N. and S. Vietnam, Cambodia, N. Korea, China, Turkey, Syria, Lebanon, and Cyprus. Charterers' privilege to call Egypt against paying extra War Risk Insurance, if any. Trading always within Institute of Warranty Limits. Charterers' option to breach IWL including lakes against paying net extra Insurance levied.

as the Charterers or their Agents shall direct, on the following conditions:

1. That the Owners shall provide and pay for all provisions, wages and consular shipping and discharging fees of the Crew; shall pay for the insurance of the vessel, also for all the cabin, deck, engine-room and other necessary stores, including boiler water and maintain her class and keep the vessel in a thoroughly efficient state in hull, machinery and equipment for and during the service.

whilst on hire

2. That the Charterers shall provide and pay for all the fuel except as otherwise agreed, Port Charges, Pilotages, Agencies, Commissions, Consular Charges (except those pertaining to the Crew), and all other usual expenses except those before stated, but when the vessel puts into a port for causes for which ~~vessel is~~ responsible, then all such charges incurred shall be paid by the Owners. Fumigations ordered because of illness of the crew to be for Owners account. ~~Fumigations ordered because of cargoes carried or ports visited while vessel is employed under this charter to be for Charterers account. All other fumigations to be for Charterers account after vessel has been on charter for a continuous period of six months or more.~~

Owners are

Charterers are to provide necessary dunnage and shifting boards, also any extra fittings requisite for a special trade or unusual cargo, but Owners to allow them the use of any dunnage and shifting boards already aboard vessel. ~~Charterers to have the privilege of using shifting boards for dunnage, they making good any damage thereto.~~

~~6. That the Charterers, at the port of delivery, and the Owners, at the port of re-delivery, shall take over and pay for all fuel remaining on board the vessel at the current prices in the respective ports, the vessel to be delivered with not less than tons and not more than tons, and to be re-delivered with not less than tons and not more than tons.~~

4. That the Charterers shall pay for the use and hire of the said Vessel at the rate of Four Thousand Eight Hundred and Fifty Dollars ($4,850,00) including overtime United States Currency per ~~ton of vessel's total deadweight carrying capacity, including bunkers and stores, on board (seaboard, per Calendar Month)~~ day commencing on and from the day of her delivery, as aforesaid, and at and after the same rate for any part of a ~~month~~ day hire to continue until the hour of the day of her re-delivery in like good order and condition, ordinary wear and tear excepted, to the Owners (unless lost) at A safe port U.K. Continent, Lisbon/Hamburg range unless otherwise mutually agreed. Charterers are to give Owners not less than 21 days notice of vessels expected date of re-delivery, and probable port. See Clause 39

in free pratique having entered the Customs House, if required

approximate and 14 days definite

5. Payment of said hire to be made ~~semi-monthly~~ in cash in United States Currency, semi-monthly in advance, and for the last half month or part of same the approximate amount of hire, and should same not cover the actual time, hire is to be paid for the balance day by day, as it becomes due, if so required by Owners, unless bank guarantee or deposit is made by the Charterers, otherwise failing the punctual and regular payment of the hire, or bank guarantee, or on any breach of this Charter Party, the Owners shall be at liberty to withdraw the vessel from the service of the Charterers, without prejudice to any claim they (the Owners) may otherwise have on the Charterers. ~~Time to count from 7 a.m. on the working day following that on which written notice of readiness has been given to Charterers or their Agents before 4 p.m., but if required by Charterers they to have the privilege of using vessel at once, such time used to count as hire.~~

Cash for vessel's ordinary disbursements at any port may be advanced as required by the Captain, by the Charterers or their Agents, subject to 2½% commission and such advances shall be deducted from the hire. The Charterers, however, shall in no way be responsible for the application of such advances.

6. That the cargo or cargoes be laden and/or discharged in any dock or at any wharf or place that Charterers or their Agents may direct, provided the vessel can safely lie always afloat at any time of tide, except at such places where it is customary for similar sive vessels to safely lie aground.

and discharge

7. That the whole reach of the Vessel's Hold, Decks, and usual places of loading (not more than she can reasonably stow and carry), also accommodations for Supercargo, if carried, shall be at the Charterers' disposal, reserving only proper and sufficient space for Ship's officers, crew, tackle, apparel, furniture, provisions, stores and fuel. ~~Charterers have the privilege of passengers as far as accommodation allows, Charterers paying $ per day per passenger for common rations and meals. However, it is agreed that in case any fines or extra expenses are incurred in the consequence of the carriage of passengers Charterers are to bear such risk and expense.~~

8. That the Captain shall prosecute his voyages with the utmost despatch, and shall render all customary assistance with ship's crew and boats. The Captain (although appointed by the Owners), shall be under the orders and directions of the Charterers as regards employment and agency; and Charterers are to load, stow, ~~and~~ trim the cargo at their expense under the supervision of the Captain, who is to sign Bills of Lading for cargo as presented, in conformity with Mate's or Tally Clerk's receipts without prejudice to this Charter Party.

9. That if the Charterers shall have reason to be dissatisfied with the conduct of the Captain, Officers, or Engineers, the Owners shall on receiving particulars of the complaint, investigate the same, and, if necessary, make a change in the appointments.

10. That the Charterers shall have permission to appoint a Supercargo, who shall accompany the vessel and see that voyages are prosecuted with the utmost despatch. He is to be furnished with free accommodation, and same fare as provided for Captain's table, Charterers paying at the rate of ~~$ 10~~ 7 dollars per day. Owners to victual Pilots and ~~Customs Officers, and also, when authorised by Charterers or their Agents, to victual Tally~~ Clerks, Stevedore's Foreman, etc., Charterers paying ~~for such victuals as per scale~~ 1.50 dollars for all such victualling.

11. That the Charterers shall furnish the Captain from time to time with all requisite instructions and sailing directions, in writing, and the Captain shall keep a full and correct Log of the voyage or voyages, which are to be patent to the Charterers, their Agents or Supercargo, when required, with a true copy of daily Logs, showing the course of the vessel and distance run and the consumption of fuel.

12. That the Captain shall use diligence in caring for the ventilation of the cargo.

~~13. That the Charterers shall have the option of continuing this charter for a further period of~~

~~on giving written notice thereof to the Owners or their Agents ..... days previous to the expiration of the first named term, or any declared option.~~

14. That if required by Charterers, time not to commence before.... September 20th, 1974 .....and should vessel not have ~~given notice of readiness~~ delivered on or before... September 30th, 1974 .....but not later than 4 p.m. Charterers or their Agents to have the option of cancelling this Charter at any time not later than the day of vessel's readiness.

15. That in the event of the loss of time from deficiency of men or stores, fire, breakdown or damages to hull, machinery or equipment, grounding, detention by average accidents to ship or cargo, drydocking for the purpose of examination or painting bottom, or by any other cause preventing the full working of the vessel, the payment of hire shall cease for the time thereby lost; and if upon the voyage the speed be reduced by defect in or breakdown of any part of her hull, machinery or equipment, the time so lost, and the cost of any extra fuel consumed in consequence thereof, and all extra expenses shall be deducted from the hire.

16. That should the Vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be returned to the Charterers at once. The act of God, enemies, fire, restraint of Princes, Rulers and People, and all dangers and accidents of the Seas, Rivers, Machinery, Boilers and Steam Navigation, and errors of Navigation throughout this Charter Party, always mutually excepted.

The vessel shall have the liberty to sail with or without pilots, to tow and to be towed, to assist vessels in distress, and to deviate for the purpose of saving life and property.

17. That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at ~~New York~~ London one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men.

18. That the Owners shall have a lien upon all cargoes, and all sub-freights for any amounts due under this Charter, including General Average contributions, and the Charterers to have a lien on the Ship for all monies paid in advance and not earned, and any overpaid hire or excess deposit to be returned at once. Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the owners in the vessel.

1950 in New York

19. That all derelicts and salvage shall be for Owners' and Charterers' equal benefit after deducting Owners' and Charterers' expenses and Crew's proportion. General Average shall be adjusted, stated and settled, according to Rules 1 to 15, inclusive, 17 to 22, inclusive, and Rule F of York-Antwerp Rules ~~1950, at such port or place in the United States as may be elected by the carrier not to be prejudiced by the~~ Rules, according to the laws and usages at the port of New York. In such adjustment disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the ship. Average agreement or bond and such additional security, as may be required by the carrier, must be furnished before delivery of the goods. Such cash deposit as the carrier or his agents may deem sufficient as additional security for the contribution of the goods and for any salvage and special charges thereon, shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery. Such deposit shall, at the option of the carrier, be payable in United States money and be remitted to the adjuster. When so remitted the deposit shall be held in a special account at the place of adjustment in the name of the adjuster pending settlement of the General Average and refunds or credit balances, if any, shall be paid in United States money.

~~In the event of accident, danger, damage or disaster, before or after commencement of the voyage resulting from any cause whatsoever,~~ whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible, by statute, contract, or otherwise, the goods, the shipper and the consignee, jointly and severally, shall contribute with the carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully and in the same manner as if such salving ship or ships belonged to strangers.

Provisions as to General Average in accordance with the above are to be included in all bills of lading issued hereunder.

20. Fuel used by the vessel while off hire, also for cooking, condensing water, or for grates and stoves to be agreed to as to quantity, and the cost of replacing same, to be allowed by Owners.

~~21. That as the vessel may be from time to time employed in tropical waters during the term of this Charter, Vessel is to be docked at a convenient place, bottom cleaned and painted whenever Charterers and Captain think necessary, at least once in every six months, reckoning from time of last painting, and payment of the hire to be suspended until she is again in proper state for the service.~~

No drydocking except in emergencies.

onboard

22. Owners shall maintain the gear of the ship as fitted, providing gear (for all derricks) capable of handling lifts ~~up to three tons~~ (as per Clause 32), also providing ropes, falls, slings and blocks. If vessel is fitted with derricks capable of handling heavier lifts, Owners are to provide necessary gear for same, otherwise equipment and gear for heavier lifts shall be for Charterers' account. Owners also to provide on the vessel ~~long cable leads for~~ night work, ~~and vessel to give use of electric light when as need~~, but any additional lights over those on board to be at Charterer's expense. The Charterers to have the use of any gear on board the vessel.

and maintain same in efficient working order

electric light

23. Vessel to work night and day, if required by Charterers and all winches to be at Charterers' disposal during loading and discharging; steamer to provide one winchman per hatch to work winches day and night, as required. ~~Charterers agreeing to pay officers, crew and winchmen, crew's bonus and bonuses for overtime work done in accordance with the working hours and rates stated in the ship's articles.~~ If the rules of the port, or labor unions, prevent crew from driving winches, shore Winchmen to be paid by Charterers. In the event of a disabled winch or winches, or insufficient power to operate winches, Owners to pay for shore engine, or engines, in lieu thereof, if required, and pay any loss of time occasioned thereby.

Crew work and assistanc always within French Union Regulations and allowances of ship articles

~~24. It is also mutually agreed that this Charter is subject to all the terms and provisions of and all the exemptions from liability contained~~ in the Act of Congress of the United States approved on the 13th day of February, 1893, and entitled "An Act relating to Navigation ~~of Vessels~~ etc.," in respect of all cargo shipped under this charter to or from the United States of America. It is further subject to the following clauses, both of which are to be included in all bills of lading issued hereunder:

U. S. A. Clause Paramount

This bill of lading shall have effect subject to the provisons of the Carriage of Goods by ~~Sea~~ Act of the United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading be repugnant to said Act to any extent, such term shall be void ~~to~~ that extent, but no further.

~~Both-to-Blame~~ Collision Clause

If the ship comes into collison with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier.

25. The vessel shall not be required to enter any ice-bound port, or any port where lights or light-ships have been or are about to be withdrawn by reason of ice, or where there is risk that in the ordinary course of things the vessel will not be able on account of ice to safely enter the port or to get out after having completed loading or discharging.

acts of pilots

26. Nothing herein stated is to be construed as a demise of the vessel to the Time Charterers. The owners to remain responsible for the navigation of the vessel, insurance, crew, and all other matters, same as when trading for their own account.

27. A commission of 2½ per cent is payable by the Vessel and Owners to Tidewater Terminals Incorporated for division as agreed and 2 1/2 percent to Barks Williams Shipping Limited for division as agreed. and 1,25 % to SOMARCO - LONDON . on hire earned and paid under this Charter, and also upon any continuation or extension of this Charter.

~~28. An address commission of 2½ per cent payable to on the hire earned and paid under this Charter.~~

Clauses 29 - 60 as attached to be considered part of this Charter Party.

CHARTERERS

TIDEWATER TERMINALS, INC.

OWNERS

RIDER TO M/V PROMETHEE

CHARTER PARTY DATED SEPTEMBER 7, 1974

Cl. 29 Cargo exclusions: Asphalt in bulk, Pitch in bulk, Ammonium Nitrate, Explosives, Black Powder, Blasting Caps, Detonator Caps, Loaded Bombs, Dynamite, TNT, Arms, Turnings, Motorblocks, and all pieces of scrap above two (2) tons.

. 30 Charterers are not to be responsible for Stevedore or other damage to the vessel unless notified in writing by the Master within twenty-four (24) hours of occurrence of damage. Master to have survey made to define and estimate damages in agreement with vessel's Agent; Master is to cooperate with Charterers and Agents in giving prompt notice of claim in writing to party causing damage.

Cl. 31 Charterers are to have the privilege of flying their house flag and painting their markings on the funnel and are to restore Owners' markings before redelivery, at Charterers' time and expense.

Cl. 32 Vessel is singledecker with four (4) holds and four (4) hatches, engines aft, French flag, built in 1967. Vessel fully lakes fitted except Owners would have to hire a radio at Montreal, which Owners will do for their own account. Vessel not grain fitted but has approved grain certificate from the French authorities.
445.000/420.000 grain/bale clear in holds.
Hatches - Nos. 1 and 4 are 13.59 X 8 Meters
Nos. 2 and 3 are 14.78 X 8 Meters
Derricks- 3 X 15 tons and 1 X 18 tons.

Cl. 33 Owners are not to paint the holds prior to or during the currency of this Charter without Charterers' permission. Vessel will deliver with odourless holds.

Cl. 34 It is understood vessel is eligible for bunkers in the United States of America and its territories and possessions.

Cl. 35 Vessel has never called at Cuba.

Cl. 36 Any special fumigation which is necessary on account of a cargo which has been carried or ports visited during this Charter to be for Charterers' account.

Cl. 37 In the event of loss of time either in port or at sea, or deviation upon the course of the voyage, caused by sickness of or accident to the crew or any person onboard the vessel (other than passengers travelling by assent of Charterers) or by reason of the refusal of the Master or crew to perform their duties, the time so lost and any extra fuel consumed and any other extra expenses incurred shall be for Owners' account. Should the vessel put back whilst on voyage by reason of accident or breakdown, the hire shall be suspended from the time of putting back until she be again in the same position and the voyage resumed therefrom.

Cl. 38 New Jason Clause, New Both to Blame Collision Clause, Chamber of Shipping War Risk Clauses 1 and 2 and U.S. and Canadian Clause Paramount, as attached, are to be considered part of this Charter Party and are to be included in Bills of Lading issued hereunder.

Cl. 39 It is agreed that cubic capacity mentioned in Line 6 of the Charter is exclusive of permanent bunker capacity as mentioned in Line 9.

Cl. 40 It is mutually agreed that all Bills of Lading issued under this Charter Party shall be subject to the terms of the 1923 Brussels Convention for the unification of certain rules relating to Bills of Lading or any Act, Law or Ordinance ratifying the said rules in force at the port of shipment.

Cl. 41 Nothwithstanding any provision whether written or printed contained in this Charter, it is agreed that nuclear fuels or radioactive waste or products are specifically excluded from the cargo permitted to be loaded or carried during this Charter Party. This exclusion does not apply to radio isotopes used or intended to be used for any industrial, commercial, agricultural, medical or scientific purposes, provided Owners' prior approval has been obtained to the loading thereof.

Cl. 42 With references to Clauses 15 and 23, in the event of a breakdown of winch or winches by reason of disablement or insufficient power, the hire be reduced for the period of such insufficiency in relation to the number of winches available. Owners are to pay, in addition, the cost of labour affected by the breakdown, either stood off or additionally engaged. This does not exempt Owners from liability for the cost of hiring shore appliances in accordance with Clause 23.

Cl. 43 It is understood that Owners will ensure that the vessel is in possession of valid certificates of [illegible] equipment for the period of this Charter as required by the regulations at ports of call, and that in the event of any delay to the vessel caused by the failure to produce such valid certificates, then Charterers may suspend hire for the time thereby lost and Owners to pay all extra expenses incidental to and resulting from such failure.

Cl. 44 The Owners authorize the Charterers, as Agents for and on behalf of the Owners and on behalf of the vessel, to arrange and contract for any towage, pilotage, or like services on any usual or customary terms and/or those terms offered or required by towing companies where such services are furnished. The Owners ratify any such contract made by the Charterers under this authority, and agree to indemnify them fully in respect of any liability arising out of the contract.

Cl. 45 Cargo claims under this Charter Party to be settled between Owners and Charterers under the Inter Club New York Produce Exchange Agreement.

Cl. 46 If required, Master to authorize Charterers or their Agents to sign Bills of Lading on his behalf as a servant to Time Charterers.

Cl. 47 OIL POLLUTION CLAUSE
Notwithstanding any terms or conditions stated elsewhere in this Charter Party, it is warranted that during the currency of this Charter, the Owners will comply fully with the U.S. Water Quality Improvement Act of 1970, any rules and/or regulations issued thereunder and any legislation enacted with respect to Oil Pollution (such expression to include any Rules and/or Regulations issued thereunder) by any Government of any Country, Departments thereof or other Authority. Should any delay to the vessel or any extension to the voyage occur from failure to comply with the said Act, Rules, Regulations or Oil Pollution Legislation, the vessel to be considered off hire for the period of such delay or extension. The Owners hereby accept responsibility for all consequences and agree to indemnify the Charterers against all claims, liabilities and costs (including Charterers' legal fees) which result from the Owners' failure to comply fully with the said Act, Rules, Regulations or Oil Pollution Legislation.

Cl. 48 Vessel is not suitable Manchester.

Cl. 49 Vessel to be delivered with about 450 tons fuel 1500 secs and about 45 tons Diesel Oil at Owners' contract price. Vessel to be redelivered with a minimum of 200 tons fuel oil 1500 secs and a minimum of 30 tons Diesel Oil. Same price both ends.

Cl. 50 Owners to give Charterers 10/5 days and 48 and 24 hours notice of delivery time.

Cl. 51 joint, on hire survey to be carried out at first load port, in Owners' time. A joint, off hire survey to be carried out before redelivery, in Charterers' time. Costs to be shared equally by Owners and Charterers.

Cl. 52 War Risk insurance and crew war bonus for world wide trading to be for Owners' account. In the event Charterers employ vessel in a trade where there is additional War Risk Insurance, Charterers to pay such additional premium actually paid by Owners less usual rebate. Any increase in crew war bonus after delivery caused by the trade in which vessel is engaged to be for Charterers' account.

Cl. 53 Charterers to have the benefit of Owners' P and I Club insofar as the rules permit. Owners' P and I Club is United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited, London.

Cl. 54 Vessel to be in possession of the necessary certificates to comply with safety and health regulations and all current requirements at all ports of call during the currency of this Charter.

Cl. 55 Vessel to furnish a calibration scale stamped "in conformity with construction" for all tanks, including fore and aft peak and double bottom tanks and deep tanks. Plimsoll marks midship and draft marks on port and starboard side, bow and stern, to be clearly cut and marked on shell plating. Vessel to furnish capacity plan, displacement scale and deadweight scale and same to be certified by master as to correctness at time of loading

Cl. 56 Vessel to tender clear of sweat battens and any obstacles that might be hindering the loading and discharging of scrap including trimming hatchcovers and ladders, tank tops, tunnels, exposed cables and pipes to be entirely and properly protected by the vessel against the hazards normally connected with a scrap cargo. Broken or split boards, cargo battens, dunnage and loose protection on tank tops not to be considered as proper protection Charterers and stevedores not to be responsible for damages to sweat battens, hatch covers and trimming hatch covers, ladders and any object if stored in such a way that they are exposed to contact with the cargo. Charterers and stevedores not to be responsible for damages to ladder brackets and batten clips, removable and unremovable, tank tops, tunnels, exposed cables and pipes not entirely and properly protected by the vessel against the hazards normally connected with a scrap cargo.

Cl. 57 Owners guarantee that vessel is not intended for breakup upon completion of the engagement entered into under this Charter Party. Should Owners, contrary to the above agreement, sell the vessel for breakup before she has been completely discharged and released by the Receivers of the cargo, the Owners to pay whatever insurance penalty might be assessed against Charterers forthwith.

Cl. 58 Should Charterers be forced to lay up vessel for any reason, Owners to take immediate steps to economize and any savings thus obtained to be passed on to Charterers.

Cl. 59 Hire to be paid to Société Générale Agence de Caen 14, Account No. 2021636-6 and paid sufficiently in advance to ensure that Owners are credited by such bank at the day hire is due.

Cl. 60 Charterers' option to trade one (1) voyage to West Coast America on payment of $20.000,00. Owners require fourteen (14) days notice if such option is exercised.

Plaintiff's Exhibit 11.

Charter Party, dated November 22, 1974.

(See opposite page.) ☞

RECOMMENDED

...d by the Documentary Committee of the Chamber of Shipping of the United Kingdom

CODE NAME: **Gencon.**

Issued to come into force for fixtures on and after 15th September 1922

The Documentary Council of The Baltic and White Sea Conference

UNIFORM GENERAL CHARTER

AS REVISED 1922

(only to be used for trades for which no approval form is in force)

NEW YORK, N.Y. November 22, 19 74

Owners. 1. It is this Day mutually agreed between Tidewater Terminals Inc.

T/C Owners of the ~~steamer~~ French or motor-vessel Promethee

of ..... tons ~~gross~~/net Register and carrying about 9800 tons of deadweight cargo,

Position. now Trading

and expected ready to load under this Charter about November 28, 1974

Charterers. and Messrs. Steelmet Export Company

of New York, N.Y. as Charterers.

Where to load. That the said vessel shall proceed to Jacksonville, Fla.

or so near thereto as she may safely get and lie

Cargo. always afloat, and there load a full and complete cargo (~~if shipment of deck cargo agreed same to be at Charterers' risk~~) of Min/Max 10,500 short tons Shredded Steel Scrap

(Charterers to provide all mats and/or wood for dunnage and any separations required, the Owners allowing the use of any dunnage wood on board if required) which the Charterers bind themselves to ship, and being so loaded the vessel shall proceed to one safe berth Chimbote, Peru

Destination.

~~as ordered on signing Bills of Lading~~ or so near thereto as she may safely get and lie always afloat and there deliver the cargo on being paid freight —on ~~delivered~~/intaken quantity— as

Rate of Freight. follows U.S.Dollars 38.00 (Thirty-Eight) per Metric Ton, 100% prepaid within 3 banking days of signing and releasing Bills of Lading marked: Freight Prepaid as per Charter Party. Freight to be discountless, non-returnable vessel and/or cargo lost or not lost.

Owners' Responsibility Clause.

2. Owners are to be responsible for loss of or damage to the goods or for delay in delivery of the goods only in case the loss, damage or delay has been caused by the improper or negligent stowage of the goods (unless stowage performed by shippers or their stevedores or servants) or by personal want of due diligence on the part of the Owners or their Manager to make the vessel in all respects seaworthy and to secure that she is properly manned, equipped and supplied or by the personal act or default of the Owners or their Manager.

And the Owners are responsible for no loss or damage or delay arising from any other cause whatsoever, even from the neglect or default of the Captain or crew or some other person employed by the Owners on board or ashore for whose acts they would, but for this clause, be responsible, or from unseaworthiness of the vessel on loading or commencement of the voyage or at any time whatsoever.

Damage caused by contact with or leakage, smell or evaporation from other goods or by the inflammable or explosive nature or insufficient package of other goods not to be considered as caused by improper or negligent stowage, even if in fact so caused.

Deviation Clause.

3. The vessel has liberty to call at any port or ports in any order, for any purpose, to sail without pilots, to tow and/or assist vessels in all situations, and also to deviate for the purpose of saving life and/or property.

Payment of Freight.

4. ~~The freight to be paid in cash without discount on delivery of the cargo~~ at mean rate of exchange ruling on day or days of payment, the receivers of the cargo being bound to pay freight on account during delivery, if required by Captain or Owners.

Cash for vessel's ordinary disbursements at port of loading to be advanced by Charterers if required at highest current rate of exchange, subject to two per cent. to cover insurance and other expenses.

Loading.

5. Cargo to be brought alongside in such a manner as to enable vessel to take the goods with her own tackle and to load the full cargo in ..... running working days. Charterers to procure and pay the necessary men on shore or onboard the lighters to do the work there, vessel only heaving the cargo onboard.

If the loading takes place by elevator cargo to be put free in vessel's holds, Owners only paying trimming expenses.

Any pieces and/or packages of cargo over two tons weight, shall be loaded, stowed and discharged by Charterers at their risk and expense.

Time to commence at 1 p.m. if notice of readiness to load is given before noon and at 6 a.m. next working day if notice given during office hours after noon.

The notice to be given to the Shippers, Messrs.....

.....

Time lost in waiting for berth to count as loading time.

Discharging.

6. Cargo to be received by Merchants at their risk and expense alongside the vessel not beyond the reach of her tackle and to be discharged in..... .....running working days. Time to commence at 1 p.m. if notice of readiness to discharge is given before noon, and at 6 a.m. next working day if notice given during office hours after noon.

~~Time lost in waiting for berth to count as discharging time.~~

Demurrage.

7. ~~Ten running days on~~ demurrage at the rate of U.S.$6,000.00 if incurred, to be paid by Charterers per day or pro rata for any part of a day, payable day by day, ~~to be allowed Merchants altogether at ports of loading and discharging~~.

Lien Clause.

8. Owners shall have a lien on the cargo for freight, dead freight, demurrage ~~and damages for detention~~. Charterers shall remain responsible for dead-freight and demurrage (~~including damages for detention~~), incurred at port of loading. Charterers shall also remain responsible for freight and demurrage (~~including damages for detention~~) incurred at port of discharge, but only to such extent as the Owners have been unable to obtain payment thereof by exercising the lien on the cargo.

Bills of Lading.

9. The Captain to sign Bills of Lading at such rate of freight as presented without prejudice to this Charterparty, but should the freight by Bills of Lading amount to less than the total chartered freight the difference to be paid to the Captain in cash on signing Bills of Lading.

Strike-, War and Ice Clauses.

10. *Strike Clause, War Clause* and *Ice-Clause as below.*

Laydays, if required by Charterers, not to commence before November 25, 1974

Cancelling Clause

11. Should the vessel not be ready to load (whether in berth or not) on or before the Dec. 2, 1974 Charterers have the option of cancelling this contract, such option to be declared, if demanded, at least 48 hours before vessel's expected arrival at port of loading. ~~Should the vessel be delayed on account of average or otherwise, Charterers to be informed as soon as possible, and if the vessel is delayed for more than 10 days after the day she is stated to be expected ready to load, Charterers have the option of cancelling this contract, unless a cancelling date has been agreed upon.~~

General Average.

12. General average to be settled according to York—Antwerp rules, 1950, ~~Proprietors of cargo to pay the cargo's share in the general expenses even if same have been necessitated through neglect or default of the Owners' servants (see clause 2).~~

Indemnity.

13. Indemnity for non-performance of this Charter-party, proved damages, not exceeding estimated amount of Freight.

Agency.

14. In every case the Owner shall appoint his own Broker or Agent both at the port of loading and the port of discharge.

~~Brokerage~~

15. ~~% brokerage on the freight earned is due to~~

~~In case of non-execution at least 1/3 of the brokerage on the estimated amount of freight and dead-freight to be paid by the Owners to the Brokers as indemnity for the latter's expenses and work. In case of more voyages the amount of indemnity to be mutually agreed.~~

GENERAL STRIKE CLAUSE.

Neither Charterers nor Owners shall be responsible for the consequences of any strikes or lock-outs preventing or delaying the fulfilment of any obligations under this contract.

If there is a strike or lock-out affecting the loading of the cargo, or any part of it, when vessel is ready to proceed from her last port or at any time during the voyage to the port or ports of loading or after her arrival there, Captain or Owners may ask Charterers to declare, that they agree to reckon the laydays as if there were no strike or lock-out. Unless Charterers have given such declaration in writing (by telegram, if necessary) within 24 hours, Owners shall have the option of cancelling this contract. If part cargo has already been loaded, Owners must proceed with same, (freight payable on loaded quantity only) having liberty to complete with other cargo on the way for their own account.

If there is a strike or lock-out affecting the discharge of the cargo on or after vessel's arrival at or off port of discharge and same has not been settled within 48 hours, Receivers shall have the option of keeping vessel waiting until such strike or lock-out is at an end against paying half demurrage after expiration of the time provided for discharging, or of ordering the vessel to a safe port where she can safely discharge without risk of being detained by strike or lock-out. Such orders to be given within 48 hours after Captain or Owners have given notice to Charterers of the strike or lock-out affecting the discharge. On delivery of the cargo at such port, all conditions of this charterparty and of the Bill of Lading shall apply and vessel shall receive the same freight as if she had discharged at the original port of destination, except that if the distance of the substituted port exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port to be increased in proportion.

GENERAL WAR CLAUSE.

If the nation under whose flag the vessel sails should be engaged in war and the safe navigation of the vessel should thereby be endangered either party to have the option of cancelling this contract, and if so cancelled, cargo already shipped shall be discharged either at the port of loading or, if the vessel has commenced the voyage, at the nearest safe place at the risk and expense of the Charterers or Cargo-Owners.

If owing to outbreak of hostilities the goods loaded or to be loaded under this contract or part of them become contraband of war whether absolute or conditional or liable to confiscation or detention according to international law or the proclamation of any of the belligerent powers each party to have the option of cancelling this contract as far as such goods are concerned, and contraband goods already loaded to be then discharged either at the port of loading, or if the voyage

has already commenced, at the nearest safe place at the expense of the Cargo-Owners. Owners to have the right to fill up with other goods instead of the contraband.

Should any port where the vessel has to load under this Charter be blockaded the contract to be null and void with regard to the goods to be shipped at such port.

No Bills of Lading to be signed for any blockaded port, and if the port of destination be declared blockaded after Bills of Lading have been signed, Owners shall discharge the cargo either at the port of loading, against payment of the expenses of discharge, if the ship has not sailed thence, or, if sailed at any safe port on the way as ordered by Shippers or if no order is given at the nearest safe place against payment of full freight.

GENERAL ICE CLAUSE.

PORT OF LOADING.

a) In the event of the loading port being inaccessible by reason of ice when vessel is ready to proceed from her last port or at any time during the voyage or on vessel's arrival or in case frost sets in after vessel's arrival, the Captain for fear of being frozen in is at liberty to leave without cargo, and this Charter shall be null and void.

b) If during loading the Captain, for fear of vessel being frozen in, deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to any other port or ports with option of completing cargo for Owner's benefit for any port or ports including port of discharge. Any part cargo thus loaded under this Charter to be forwarded to destination at vessel's expense but against payment of freight, provided that no extra expenses be thereby caused to the Receivers, freight being paid on quantity delivered (in proportion if lumpsum), all other conditions as per Charter.

c) In case of more than one loading port, and if one or more of the ports are closed by ice, the Captain or Owners to be at liberty either to load the part cargo at the open port and fill up elsewhere for their own account as under section B or to declare the charter null and void unless Charterers agree to load full cargo at the open port.

d) This Ice Clause not to apply in the Spring.

PORT OF DISCHARGE.

a) Should ice (except in the Spring) prevent vessel from reaching port of discharge Receivers shall have the option of keeping vessel waiting until the re-opening of navigation and paying demurrage, or of ordering the vessel to a safe and immediately accessible port where she can safely discharge without risk of detention by ice. Such orders to be given within 48 hours after Captain or Owners have given notice to Charterers of the impossibility of reaching port of destination.

b) If during discharging the Captain for fear of vessel being frozen in deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to the nearest accessible port where she can safely discharge.

c) On delivery of the cargo at such port, all conditions of the Bill of Lading shall apply and vessel shall receive the same freight as if she had discharged at the original port of destination, except that if the distance of the substituted port exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port to be increased in proportion.

Clauses 16 through 42 as attached, to be part of this Charter Party.

Tidewater Terminals, Inc.
Walter Vierent

STEELMET EXPORT COMPANY

MV "PROMETHEE" Rider to Charter Party Dated November 22, 1974

16. Charterers have the privilege of shifting to second berth at discharge port, all shifting expenses to be for Charterers account and full time shifting to count as Laytime; however, officers and crew overtime to be for Owners account.

17. Cargo is to be loaded, stowed and discharged by the Charterers, free of expense to the vessel.

18. Cargo is to be loaded at 3000 Metric Tons, and discharged at 800 Metric Tons per weather working day of 24 consecutive hours, Sundays and holidays excepted, unless used and if used only actual time used to count.

19. If sooner despatched, Owners to pay despatch at the rate of U.S.$3,000.00 per day or prorata for part of a day on laytime saved both ends and payment to be made in the same currency as freight payment. Laytime to be non-reversible.

20. At each port, time to commence at 1 p.m. if Notice of Readiness is given, before noon and at 8.00 a.m. next working day if Notice given during office hours after noon. Time lost in waiting for berth to count as loading and discharging time.

21. Owners to give 5 days approximate and 3 days definite notices of readiness to load for loadport.

22. Vessel to wireless agents at loading and discharging ports, giving 72 hours notice at loadport and 96 hours notice at dischargeport, of expected time of arrival; also 48 hours final notice of arrival to be given to agents at loading and discharging ports.

23. Vessel has one deck, four holds and four hatches. Charterers privilege to work all hatches at all times; ship to give free use of winches and power to drive same at all times and to supply light for nightwork, if required, free of expense to Charterers.

    Vessel is further described as follows:
    Built 1967, Singledecker engine AFT, 10389 DWT on 26' 10" SW DRAFT.
    420,000 CFT Bale.

24. Vessel to tender clear of sweat battens and any obstacles that might be hindering the loading and discharging of scrap including trimming hatch-covers and ladders. Tanktops, tunnels, exposed cables and pipes to be entirely and properly protected by the vessel against the hazards normally connected with a scrap cargo. Broken or split boards, cargobattens, dunnage and loose protection on tanktops not to be considered as proper protection. Charterers not to be responsible for damage to ladder brackets and batten-clips removable or unremovable. Warranted wooden bulkhead sheathing and landing pads on tanktops to be in good condition.

38. Master to authorize agents on arrival at loading port to sign and issue Bills of Lading any time Charterers desire for any quantity loaded up to that time, but any time lost as a result thereof to be computed as laytime.

39. Owners guarantee that vessel is not intended for breaking upon completion of the engagement entered into under this Charter Party. Should Owners contrary to the above guarantee, sell the vessel for breakup before she has been completely discharged and released by the receivers of the cargo, then Owners to pay whatever insurance penalty might be assessed against the Charterers forthwith.

40. If vessel calls at any U.S. port for purposes of loading or discharging cargo and/or embarking or disembarking passengers, vessels cargogear and all other equipment shall comply with the regulations established by U.S. PUblic Law 85-742 Part 9 (Safety & Health Regulations for Longshoring). If longshoremen are not permitted to work due to failure of Master and/or Owners and/or Owners agents to comply with the aforementioned regulations, any delay resulting therefrom shall be for Owners account.

41. The Act of God, restraint of Princes and rulers, the country's enemies, fire, floods, droughts, and all and every dangers and accidents of the seas, rivers and navigation of whatsoever nature and kind, riot, strikes, or stoppages at the mills or on the railroads or at seaboard, and all and every other unavoidable hindrances which may prevent the loading, discharging and delivery during the said voyage always mutually excepted, but Gencon printed strike clause to remain in force where applicable.

42. Chamber of Shipping War Risks Clause 1 and 2; New Jason Clause; New Both-to-Blame Collision Clause; P and I Bunkering Clause; and U.S.A. Clause Paramount, as attached hereto, are to be considered fully incorporated in this Charter Party.

BROKERS FOR THE CHARTERING PURCHASE AND SALE OF SHIPS

GENERAL OFFICES

15 EAST 26th STREET, NEW YORK, N.Y. 10010

AUT - SCRAP - JAPAN - 1965

Vay #12

03270

NEW YORK, N.Y. December 16 19 74

Owners 1. It is this Day mutually agreed between ATLANTIC AND GREAT LAKES STEAMSHIP CORPORATION

Disponent

Owners of the Greek Flag motor vessel "MARY" built 1957, Gearless Ore Carrier

of 4,494 tons Register

now trading, classed 100 A-1 Lloyd's or equivalent

Position

Charterers and Messrs. C.V.G. SIDERURGICA DEL ORINOCO CA

of Caracas, Venezuela as Charterers.

That the said vessel shall proceed to one (1) ~~or two (2)~~ safe ~~ports~~ berth Mobile, Alabama

Where to Load or so near thereto as she may safely get and lie always afloat, and there load a

Cargo full and complete cargo of 8,200 metric tons Shredded Scrap

(Underdeck)

Ship/max

(Charterers to provide all mats and/or wood for dunnage and any separations required, the Owners allowing the use of any dunnage wood on board J

Matanzas, Venezuela, where vessel's arrival draft not to exceed 28' fresh

Destination

One (1) or two (2) safe ports JAPAN, HAMAMATSU/MIZUSHIMA RANGE

Charterers' option discharging at any two places in KANSAI, TOKAI, TOHOKU, HOKKAIDO, SHIKOKU, KYUSHU

shifting to be for Owners' account.

or so near thereto as she may safely get and lie always afloat and there deliver the cargo

Rate of Freight

Lump sum of USD 18.00 (EIGHTEEN DOLLARS) per metric ton FIOT

Freight payable in U.S.Currency in NEW YORK. Freight to become due upon completion of loading and surrender of Bills of Lading.

Owners Risk Bills of Clause

2. Owners are to be responsible for loss of or damage to the goods or for delay in delivery of the goods only in case the loss, damage or delay has been caused by the improper or negligent stowage of the goods (unless stowage performed by shippers or their stevedores or servants) or by personal want of due diligence on the part of the Owners or their Manager to make the vessel in all respects seaworthy and to secure that she is properly manned, equipped and supplied or by the personal act or default of the Owners or their Manager.

And the Owners are responsible for no loss or damage or delay arising from any other cause whatsoever, even from the neglect or default of the Captain or crew or some other person employed by the Owners on board or ashore for whose acts they would, but for this clause, be responsible, or from unseaworthiness of the vessel on loading or commencement of the voyage or at any time whatsoever.

Damage caused by contact with or leakage, smell or evaporation from other goods or by the inflammable or explosive nature or insufficient package of other goods not to be considered as caused by improper or negligent stowage, even if in fact so caused.

Deviation Clause

3. The vessel has liberty to call at any port or ports in any order, for any purpose, to sail without pilots, to tow and/or assist vessels in all situations, and also to deviate for the purpose of saving life and/or property.

Payment of Freight

4. ~~The freight to be paid to the Owners or their agents or assigns in cash on signing Bills of Lading, or on demand of the Captain or Owners, in part of payment to be advanced by Charterers if requested at the port of loading, the balance to be paid on completion of discharge, subject to deduction of brokerage, if any, and any freight advance to be deducted from the gross freight.~~

Loading

5. ~~Cargo to be stowed in accordance with the usual practice of the port of loading, and the Captain to sign Bills of Lading as presented, without prejudice to this Charterparty.~~

~~Notice of readiness to be given to the Shippers, Messrs.~~

~~Time lost in waiting for berth to count as loading time.~~

~~6. Cargo to be received by the Master at such rate as he may deem expedient, but the Owners shall be responsible for any damage to the cargo caused by improper stowage.~~

Discharging

~~Time lost in waiting for berth to count as discharging time.~~ (if incurred, to be paid by Charterers)

Demurrage

~~7. For demurrage over and above the allowed laytime, Charterers to pay the Owners at the rate of money and conditions~~ USD 6,000.00 (SIX THOUSAND) per day or pro rata for any part of a day, ~~payable daily or pro rata for any part of a day.~~

Lien Clause

8. Owners shall have a lien on the cargo for freight, dead freight, demurrage and damages for detention. Charterers shall remain responsible for dead freight and demurrage (including damages for detention) incurred at port of loading. Charterers shall also remain responsible for freight and demurrage (including damages for detention) incurred at port of discharge, but only to such extent as the Owners have been unable to obtain payment thereof by exercising the lien on the cargo.

Bills of Lading

9. The Captain to sign Bills of Lading at such rate of freight as presented without prejudice to this Charterparty, but should the freight by Bills of Lading amount to less than the total chartered freight the difference to be paid to the Captain in cash on signing Bills of Lading.

Strike, War and Ice Clauses

10. *Strike Clause, War Clause and Ice Clause as below*

One of freight to be prepaid within seven (7) days after surrender of signed Bills of Lading, marked: "FREIGHT PREPAID AS PER CHARTER PARTY", discountless and non-returnable, vessel and/or cargo lost or not lost. Balance payable on completion of discharge. Charterers' privilege to deduct undisputed despatch and brokerage from freight.

Laydays, if required by the Charterers, not to commence before December 22, 1974

Cancelling Clause

11. Should the vessel not be ready to load whether in berth or not on or before the December 31, 1974 Charterers have the option of cancelling this contract. Such option to be declared at least 48 hours in advance at noon during business hours after the vessel is ready to arrive at port of loading, failing which the vessel to be delivered. On receipt of such notice or on the vessel's arrival at the port of loading, whichever shall be the later, the Charterers shall have the option to load other cargo for their own account. In the event the vessel does not arrive at the port of loading within the contract time, Charterers have the option of cancelling this contract, or of accepting delay, but in no case may delay have been caused by the Charterers' failure to load.

General Average

12. General average to be settled according to York - Antwerp rules 1950. Provisions of terms to pay the cargo share on the general average shall be deemed to be satisfied when the carrier has received the cargo's share of the general average from the shipper.

Indemnity.

13. Indemnity for non-performance of this Charter party, proved damages, not exceeding estimated amount of freight.

Agents

14. [illegible]

Brokerage

15. 3 3/4 % [illegible] AMERICAN UNION TRANSPORT, INC.

In case of non execution at least 1/3 of the brokerage on the estimated amount of freight and dead freight to be paid by the Owners to the Brokers as indemnity for the latter's expenses and work, in case of more voyages the amount of indemnity to be mutually agreed.

General Strikes Clause

Neither Charterers nor Owners shall be responsible for the consequences of any strikes or lock-outs preventing or delaying the fulfilment of any obligations under this contract.

If there is a strike or lock-out affecting the loading of the cargo, or any part of it, when vessel is ready to proceed from her last port or at any time during the voyage to the port or ports of loading or after her arrival there, Captain or Owners may ask Charterers to declare that they agree to reckon the laydays as if there were no strike or lock-out. Unless Charterers have given such declaration in writing (by telegram, if necessary) within 24 hours, Owners shall have the option of cancelling this contract. If part cargo has already been loaded, Owners must proceed with same, freight payable on loaded quantity only having liberty to complete with other cargo on the way for their own account.

If there is a strike or lock-out affecting the discharge of the cargo on or after vessel's arrival at or off port of discharge and same has not been settled within 48 hours, Receivers shall have the option of keeping vessel waiting until such strike or lock-out is at an end, against paying half demurrage after expiration of the time provided for discharging, or of ordering the vessel to a safe port where she can safely discharge without risk of being detained by strike or lock-out. Such orders to be given within 48 hours after Captain or Owners have given notice to Charterers of the strike or lock-out affecting the discharge. On delivery of the cargo at such port, all conditions of this Charter party and of the Bill of Lading shall apply and vessel shall receive the same freight as if she had discharged at the original port of destination, except that if the distance of the substituted port exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port to be increased in proportion.

General War Clause

If the nation under whose flag the vessel sails should be engaged in war and the safe navigation of the vessel should thereby be endangered either party to have the option of cancelling this contract, and if so cancelled, cargo already shipped shall be discharged either at the port of loading or, if the vessel has commenced the voyage, at the nearest safe place at the risk and expense of the Charterers or Cargo Owners.

If owing to outbreak of hostilities the goods loaded or to be loaded under this contract or part of them become contraband of war whether absolute or conditional or liable to confiscation or detention according to international law or the proclamation of any of the belligerent powers each party to have the option of cancelling this contract as far as such goods are concerned, and contraband goods already loaded to be then discharged either at the port of loading, or if the voyage has already commenced, at the nearest safe place at the expense of the Cargo-Owners. Owners to have the right to fill up with other goods instead of the contraband.

Should any port where the vessel has to load under this Charter be blockaded the contract to be null and void with regard to the goods to be shipped at such port.

No Bills of Lading to be signed for any blockaded port, and if the port of destination be declared blockaded after Bills of Lading have been signed, Owners shall discharge the cargo either at the port of loading, against payment of the expenses of discharge, if the ship has not sailed there, or, if sailed, at any safe port on the way as ordered by Shippers or if no order is given at the nearest safe place against payment of full freight.

GENERAL ICE CLAUSE

Port of Loading

a) In the event of the loading port being inaccessible by reason of ice when vessel is ready to proceed from her last port or at any time during the voyage or on vessel's arrival or in case frost sets in after vessel's arrival, the Captain for fear of being frozen in is at liberty to leave without cargo, and this Charter shall be null and void.

b) If during loading the Captain, for fear of vessel being frozen in, deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to any other port or ports with option of completing cargo for Owner's benefit for any port or ports including port of discharge. Any part cargo thus loaded under this Charter to be forwarded to destination at vessel's expense but against payment of freight, provided that no extra expenses be thereby caused to the Receivers, freight being paid on quantity delivered (in proportion if lump sum), all other conditions as per Charter.

c) In case of more than one loading port, and if one or more of the ports are closed by ice, the Captain or Owners to be at liberty either to load the part cargo at the open port and fill up elsewhere for their own account as under sections b) or to declare the charter null and void unless Charterers agree to load full cargo at the open port.

d) This Ice Clause not to apply in the Spring.

Port of Discharge

a) Should ice (except in the Spring) prevent vessel from reaching port of discharge Receivers shall have the option of keeping vessel waiting until the reopening of navigation and paying demurrage, or of ordering the vessel to a safe and immediately accessible port where she can safely discharge without risk of detention by ice. Such orders to be given within 48 hours after Captain or Owners have given notice to Charterers of the inaccessibility of reaching port of destination.

b) If during discharging the Captain for fear of vessel being frozen in deems it advisable to leave, he has liberty to do so with what cargo he has on board and to proceed to the nearest accessible port where she can safely discharge.

c) On delivery of the cargo at such port, all conditions of the Bill of Lading shall apply and vessel shall receive the same freight as if she had discharged at the original port of destination, except that if the distance of the substituted port exceeds 100 nautical miles, the freight on the cargo delivered at the substituted port to be increased in proportion.

Clauses Nos. 16 to 51, both inclusive, as on the reverse side hereof, are to be considered fully incorporated in this Charter Party.

Contract 12/11/7[illegible]

16. Charterers have the privilege of shifting to other berths each port both ends, all shifting expenses to be for Charterers' account and full time shifting to count as laytime; however, officers' and crew's overtime and [illegible] consumed to be for Owners' account.

17. Cargo is to be loaded, stowed and discharged by the Charterers, free of expense to the vessel.

18. Cargo is to be loaded, stowed and discharged within a total of ~~twenty seven (27)~~ \eleven (11)/ weather working days of 24 hours, Sundays and Holidays excepted, even if used.
If longer detained, Charterers to pay demurrage at the rate stipulated in Clause 7;
If sooner despatched, Owners to pay despatch at the rate of USD 3,000.00 (THREE THOUSAND DOLLARS) per day or pro rata for part of a day on laytime saved.
Demurrage and despatch to be settled within sixty (60) days after completion of discharge.

19. Time from Noon Saturday until 8:00 a.m. Monday not to count, even if used.
Time from Midnight preceding Holiday until 8:00 a.m. the day after Holiday not to count, even if used.

20. At each port, time to count from 8:00 a.m. on the first working day after due notice given, whether vessel in berth or not; notice of readiness to be given in writing with office hours.

21. Owners to give fourteen (14) days notice, also ten (10) days notice of expected readiness to load.
~~Orders for first loading port to be given by Charterers on receipt of giving five (5) days notice of ETA.~~
~~Orders for first discharging port to be given latest when vessel 96 hours off JAPAN, irrespective of whether orders had been given earlier or a port or ports mentioned in the Bills of Lading.~~
~~Orders for second loading and/or second discharging port to be given latest while vessel is loading or discharging at first port.~~

22. Vessel to wireless Charterers' Agents at loading and \Owners' Agents at/ discharging ports, giving 96 hours notice of expected time of arrival; also, 48 hours final notice of arrival to be given to Charterers' Agents at loading and \Owners' Agents at/ discharging ports. ~~Owners' Agents at~~

23. Owners guarantee minimum ~~[illegible]~~ \8,200 metric/ tons of 2240 lbs. deadweight for cargo and ~~[illegible]~~ \374,786/ cubic feet bale space, ~~including [illegible]~~ ~~[illegible]~~ ~~[illegible]~~.

24. Vessel has ~~[illegible]~~ \one (1)/ deck and ~~five (5) [illegible]~~; \in holds/four hatches 61'X 33'; excluding one hatch measuring 13'X 20'/ Charterers' privilege to work all hatches at all times; double ~~winches and double derricks at each hatch in perfect working condition; ship to give free use of steam and winches at all times and~~ supply light for night work, if required, free of expense to Charterers.

25. Vessel to furnish a certified calibration scale for all tanks including fore and aft peaks and double bottom tanks and deeptanks; Plimsoll marks amidships and draft marks on port and starboard sides bow and stern to be clearly cut and marked on shell plating; Vessel to furnish capacity plan, displacement scale, and deadweight scale, and same to be certified by the Master as to correctness at time of loading.

26. Vessel to tender clear of sweat battens and any obstacles that might be hindering the loading and discharging of scrap, including trimming hatch covers and ladders. Tanktops, tunnels, exposed cables and pipes to be entirely and properly protected by the vessel against the hazards normally connected with a scrap cargo. Broken or split boards, cargo battens, dunnage and loose protection on tanktops not to be considered as proper protection. Charterers not to be responsible for damages to sweat battens, hatch covers and trimming hatch covers and any objects if stored in such a way that they are exposed to contact with the cargo. Charterers not to be responsible for damages to ladder brackets and batten clips, removable or unremovable. Warranted wooden bulkhead sheathing and landing pads on tanktops to be in good condition.

27. ~~Use of hatch beams and hatch covers between lower holds and lowerdecks generally at the discretion of ship's captain with the exception of such lowerdecks where discharge and covers are necessary for cargo apportionment purposes; these are not to required by Charterers/ Shippers. All hatch beams to be individually lined up on decks before arrival at loading port for identification and inspection.~~

28. The stevedores, although appointed by Charterers, Shippers, Receivers or their Agents, to be under the direction and control of the Captain. Charterers, Shippers or Receivers shall not be responsible for the acts and defaults of the stevedores at loading and discharging ports. A joint survey to be held prior to loading and after completion of discharging between Owners and stevedores appointed by Charterers, the expenses of which to be shared equally. All claims for damages allegedly caused by stevedores at loading and discharging ports to be settled directly between Owners and stevedores. Master to notify stevedores of damage, if any, in writing within 24 hours after occurence. Otherwise, stevedores not to be held liable.

29. Overtime to be for account of party ordering same, however, officers' and crew's overtime always to be for Owners' account.

30. At loading and discharging ports, wharfage on vessel to be for vessel's account and wharfage on cargo to be for Charterers' account.
~~If vessel should be ordered to load at JUST OUTSIDE CURRENT CHANNEL, NO BERTH, Owners to allow Charterers in lieu of payment wharfage of US$[illegible] per day or part of a day alongside berths, to conduct equivalent amount from freight payment.~~

31. ~~Charterers' option to load under Master's supervision up to 500 tons sundries cargo on deck at their risk and expense.~~

Notices at Matanzas to be given off Pilot Station Orinoco River to "SIMON" Carriers and "Simon" Matanzas

32. Charterers' privilege to load and discharge with magnets.

33. Lightenage, if any, either end, to be for Charterers' account.

34. Charterers' Agents at loading/Owners agents at discharge port, ~~been made~~, vessel paying the customary Agency fee.

35. After completion of loading and also of discharging, Master to issue and sign a statement as to the status of damages and repairs, if any. The Master has, furthermore, to sign statement of facts concerning the time used in loading and discharging, submitted to him by vessel's Agents, also laytime statement each end, making his reservation if he believes these statements to be incorrect. The Master to issue and sign statement that available cargo space on board the S/S MV "MARY" has been utilized and stowed to his satisfaction. The Master to issue and sign draft statement indicating quantity of cargo on board.

36. Any extra insurance on account of vessel's age, flag, classification or ownership to be for vessel's account.

37. Any and all differences and disputes of whatsoever nature arising out of this Charter, shall be put to arbitration in the City of NEW YORK pursuant to the laws relating to arbitration there in force, before a board of three persons consisting of one arbitrator to be appointed by the Owners, one by the Charterers, and one by the two so chosen. The decision of any two of the three on any point or points shall be final.

38. Owners guarantee that vessel is not intended for breakup upon completion of the engagement entered into under this Charter. Should Owners contrary to above guarantee sell the vessel for breakup before she has completed discharge and been released by the Receivers of the cargo, then Owners to pay whatever insurance penalty might be assessed against the Charterers forthwith.

39. Master is not to take on or pump ballast at loading and discharging ports without obtaining permission of the Charterers. Vessel is not to take on, release, or switch from one tank or other compartments to another, any ballast, fresh water or fuel oil while the surveyor is taking draft readings and/or tank soundings.

40. Charterers are not required to accept notice of readiness of the vessel at loading port if the ship has more than eight (8) feet drag by the stern.

41. Owners will instruct Master to authorize in writing vessel's local Agents to sign on his behalf Bills of Lading if surveyor has draft not calculated when vessel is ready to sail.

42. ~~Owners responsible for any consequences including time lost and expenses incurred, especially in regard to working and loading vessel at loading ports, due to the fact that vessel is flying (Panamanian, Honduras, Liberian, Costa Rican, etc.) Flag.~~

43. If vessel calls at any U.S. port for purposes of loading or discharging cargo and/or embarking or disembarking passengers, vessel's cargo gear and all other equipment must comply with Regulations established by U.S. Public Law 85-742 Part 9 (Safety & Health Regulations for Longshoring). If longshoremen are not permitted to work due to failure of the Master and/or Owners and/or Owners' Agents to comply with the forementioned Regulations, any delay resulting therefrom shall be for Owners' account.

44. Charterers' privilege to sublet this Charter, but original Charterers to remain responsible for its fulfilment.

45. Owners guarantee performing vessel has not called at Cuba and/or North Vietnam since January 1st, 1962.

46. Chamber of Shipping War Risks Clauses 1 and 2, New Jason Clause, New Both-to-Blame Collision Clause, F. & I. Bunkering Clause and U.S.A. ~~Navigation~~ Clause Paramount, as attached hereto, are to be considered fully incorporated in this Charter Party.

47. Orinoco River tolls, Venezuelan taxes including Suboido fees for Charterers' account but excluding Venezuelan Income tax, which for Owners' account.

48. Owners' warrant that they have secured and carry on board the vessel a U.S. Federal Maritime Commission's Certificate of Financial Responsibility as required under the U.S. Water Quality Improvement Act of 1970. Owners' shall be liable for any and all consequences arising from their failure to obtain the aforementioned certificate.

49. Owners to pay port charges at Matanzas.

Free load of cargo to be loaded as closely as possible to bottom of vessel so as to provide proper flooring and cushion.

Plaintiff's Exhibit 12—Telex Dated November 26, 1974.

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11-26-74 TELEX: 8240 12:14 PM

RE: PURCHASE ORDER E-01688
PURCHASE ORDER E-01782
10,000 SHORT TONS OF SHREDDED STEEL SCRAP JACKSONVILLE/CHINBOTE

PLEASE BE ADVISED THAT WE ARE NEGOTIATING TWO (2) SHIPS.

A-A M.V. MARY BUILT 1957 ORE CARRIER, FIVE (5) HOLDS FIVE (5) HATCHES, ENGINE AFT BRIDGE MIDSHIP READY TO START LOADNG JACKSONVILLE APPROXIMATELY DECEMBER 8, 1974.

B-A M.V. PROMETHEE BUILT 1967, SINGLE DECK BULK CARRIER ENGINE/BRIDGE AFT FOUR (4) HOLDS FOUR (4) HATCHES READY TO START LOADNG JACKSONVILLE NOVEMBER 29/30, 1974.

Plaintiff's Exhibit 12

AS OUR DISCUSSION WITH YOU MR. CESAR MOLINA, WE ARE GOING TO CHARTER FIRM M.V. PROMETHEE DUE TO THE EARLIER LOAD AND NO PENALTY ON THE INSURANCE DUE TO SHIP'S AGE. PLEASE, THEREFORE, CONFIRM IMMEDIATELY THAT YOU ARE ACCEPTING M.V. PROMETHEE AS WE HAVE TO FINALIZE NEGOTIATIONS TODAY.

REGARDS,

STEELMET EXPORT COMPANY

236077 SMET UR
PLEASE RECEIVED WELL

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PLEASE RECEIVED WELL OK
CAN YOU ANSWER TODAY PLEASE
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HACER HOYOK BIBI
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SIDPERU 3540276T
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Plaintiff's Exhibit 13—Telex Dated November 27, 1974.

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SIDERPERU
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PERU

RE PURCHASE ORDERS E01688 E01782 10,000 SHORTTONS SHREDDED STEEL SCRAP JACKSONVILLE CHIMBOTE STOP AWAITING REPLY TO OUR TELEX NO 8240 OF NOVEMBER 26TH STOP PLEASE URGENTLY ADVISE YOUR CONFIRMATION OF ACCEPTANCE PROMETHEE AS WE MUST CLOSE NEGOTIATIONS WITH OWNERS STOP VERY IMPORTANT YOU ANSWER US TODAY IN ORDER TO AVOID LATE SHIPMENT STOP DISCHARGING TERMS 800 METRICTON PER WEATHER WORKING DAY SUNDAYS HOLIDAYS EXCEPTED UNLESS USED IF USED ACTUAL TIME WORKED TO COUNT AS LAYTIME STOP DEMURRAGE USD 6,000 DESPATCH USD 3,000 STOP REGARDS STEELMET EXPORT COMPANY

Plaintiff's Exhibit 14.

Telex in Spanish, Dated November 28, 1974.

(English translation reproduced on the opposite page.) ☞

TRANSLATION from Spanish
REF. # 12- /lu

LIMA NOVEMBER 28, 1974

STEELMET EXPORT CO.

REF. TELEX 8240

PLF. ~~DUFT.~~ NIF. SX # I one IN EV FOR NO Feb 3, 76

WE ADVISE YOU THAT THE PURCHASE OF 10,000 SHORT TONS OF SCRAP WAS MADE ON C AND F TERMS AND THEREFORE WE CANNOT DECID ON VESSEL WHICH WILL CARRY THE MATERIAL

VERY TRULY YOURS

CORNEJO

SIDERPERU

BERTRAND LANGUAGES INC.
369 Lexington Ave., New York, N. Y. 10017
Suite 503
(212) 867-2370

Plaintiff's Exhibit 15—Telex Dated December 2, 1974.

422034 SMET UI3343540270*
02152
MOM FOR OPERATOR
ITT TLX OPR I UI
*
422034 SMET UI
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SIDPERU 3540270
V
236077 SMET UR
12-2-74 TELEX: 8253
RE: 10,000 TONS SHREDDED SCRAP
WITH REFERENCE TO YOUR TELEX DATED NOVEMBER 28, 1974, PLEASE BE ADVISED THAT WE HAVE CHARTERED M.V. PROMETHEE.
WILL COMMENCE LOADING DECEMBER 4.
WILL FINISH LOADING AND SAIL FROM JACKSONVILLE ON DECEMBER 8. ETA—CHIMBOTE DECEMBER 17. MAXIMUM DRAFT ON ARRIVAL IN CHIMBOTE 26FEET 10 INCHES.
PLEASE ADVISE FULL NAME AND ADDRESS OF AGENTS AT CHIMBOTE.
THANK YOU
REGARDS
A. AVRAAMIDES
*
SIDPERU 3540270
422034 SMET UI
1542 DEC 02 0002.1

Plaintiff's Exhibit 16.

Bill of Lading Dated December 8, 1974.

(See opposite page.) ☞

Form 35-146—Printe

NOTIFY PARTY:

EMPRESA SIDERUS
"SIDER PERU" AV
11 PISO LIMA, P

TOTAL

TOTAL

TOTAL

TIM

Days

Received

B/L NO

"FREIGHT

Form 35-146—Printed in U.S.A. and sold by UNZ & CO., An Affiliate of Scott Ptg. Corp., 190 Baldwin Ave., J. C., N J. 07306

OTIFY PARTY:

MPRESA SIDERURGICA DEL PERU
SIDER PERU" AV. TACNA 543
1 PISO LIMA, PERU

THESE COMMODITIES LICENSED BY U.S. GOVERNMENT FOR ULTIMATE DESTINATION PERU. DIVERSION CONTRARY TO U.S. LAWS PROHIBITED.

PLF. EX. K
DEF.
WIT. IN EV. FOR ID

BULK CARGO

BILL OF LADING

SHIPPED in apparent good order and condition . 4,762... METRIC ..... tons of 2240 lbs. 1,000 KGS.

CHATARRA DE ACERO P.A. 73.03.00.00 ..... more or less, all on board to be delivered,

by STEELMET EXPORT COMPANY ..... on board the Steamship Motorship

called the . PROMETHEE ..... of FRANCE ..... whereof

CAPTAIN MAUFFRET ..... is Master for this voyage, at the

port of JACKSONVILLE, FLORIDA ..... and to be delivered at the port

of . CHIMBOTE, PERU ..... or as near thereto as the vessel

can safely get, always afloat, unto TO ORDER OF BANCO DE LA NACION, LIMA, PERU.

..... or ..... THEIR ..... Assigns,

on payment of freight and charges as per Charter Party dated . NOVEMBER 22, 1976 .....

ALL the terms, exceptions and conditions contained in said charter party are herein incorporated and govern the rights of the parties concerned in this shipment.

IN WITNESS WHEREOF, the Master or Agent of the said Vessel hath signed THREE (3) ..... Bills of Lading, all of this tenor and date, drawn as a set consecutively numbered, any one of which being accomplished the others to be void.

Dated at JACKSONVILLE, FLORIDA ..... this 3RD ..... day of DECEMBER 19 76

WEIGHT, MEASUREMENT, QUANTITY, QUALITY UNKNOWN. CLEAN ON BOARD SIDER PERU

o/c E - 01688 REQ MAT - 21015

COPY

NOT NEGOTIABLE

..... Master

CARGO

..... Tons in No. 1 Hatch
..... Tons in No. 2 Hatch
..... Tons in No. 3 Hatch
..... Tons in No. 4 Hatch

TOTAL ..... Tons in Forward Hold

..... Tons in No. 5 Hatch
..... Tons in No. 6 Hatch
..... Tons in No. 7 Hatch
..... Tons in No. 8 Hatch

TOTAL ..... Tons in After Holds

TOTAL ..... Tons.

TIME USED IN LOADING

Days ..... Hours .....

Received on Account of Freight.

.....

B/L NO. 0 (2) .....

Copy No. .....

"FREIGHT PREPAID"

EXHIBIT

Plaintiff's Exhibit 17.

Bill of Lading Dated December 8, 1974.

(See opposite page.) ☞

Form 35-146—Printed in

TOTAL

TOTAL

TOTAL

TIME

Days

Received on

B/L NO.

Copy

ted in U.S.A. and sold by UNZ & CO., An Affiliate of Scott Ptg. Corp., 190 Baldwin Ave., J. C., N J. 07306

THESE COMMODITIES LICENSED BY U.S. GOVERNMENT FOR ULTIMATE DESTINATION PERU
DIVERSION CONTRARY TO U.S. LAWS PROHIBITED.

PLF. DIST. NYS
WIT. VA
DATE Feb 3, 70
EX. # K1
IN EX | FOR ID

DEL PERU
ACIA S.A.
RU

BULK CARGO

BILL OF LADING

SHIPPED in apparent good order and condition .....4794..... tons of 2240 lbs. 1,000 KGS.

of ..CHAMBRA DE ACERO P.de. 70.00.00.00..... more or less, all on board to be delivered,

by ...THYSSEN, INC. ..... Steamship on board the good Motorship

called the ...PROMETHEUS ..... of ...FRANCE ..... whereof

.....CAPTAIN [illegible] ..... is Master for this voyage, at the

port of . JACKSONVILLE, FLORIDA ..... and to be delivered at the port

of .....CHIMBOTE, PERU ..... or as near thereto as the vessel

can safely get, always afloat, unto TO ORDER OF BANCO DE LA NACION, LIMA, PERU.....

..... or .....TUEIR..... Assigns,

on payment of freight and charges as per Charter Party dated...NOVEMBER 22, 1969.....

ALL the terms, exceptions and conditions contained in said charter party are herein incorporated and govern the rights of the parties concerned in this shipment.

IN WITNESS WHEREOF, the Master or Agent of the said Vessel hath signed .3. THREE (3)..... Bills of Lading, all of this tenor and date, drawn as a set consecutively numbered, any one of which being accomplished the others to be void.

Dated at .....JACKSONVILLE, FLORIDA..... this .8.TH..... day of DECEMBER..... 19

WEIGHT, MEASUREMENT, QUANTITY, QUALITY UNKNOWN CLEAN ON BOARD SIDER PERU
c/s E-01732 REQ PLNT 22035

.....
Master

CARGO

.....Tons in No. 1 Hatch
.....Tons in No. 2 Hatch
.....Tons in No. 3 Hatch
.....Tons in No. 4 Hatch

.....Tons in Forward Hold

.....Tons in No. 5 Hatch
.....Tons in No. 6 Hatch
.....Tons in No. 7 Hatch
.....Tons in No. 8 Hatch

.....Tons in After Holds

.....Tons.

ME USED IN LOADING

..... Hours.....

d on Account of Freight.

.....

O...ONE (1).....

Copy No.....

PREPAID"

Plaintiff's Exhibit 18.

Commercial Invoice Dated November 26, 1974.

(See opposite page.) ☞

STEELMET EXPORT COMPANY

1204 GRANT BUILDING
PITTSBURGH, PA. 15219
TELEPHONE: (412) 261-2790
TELEX: 866216

EX # E IN EV FOR ID
WIT. Feb. 3, 76

INVOICE NO. 10246

OFFICES: 919 THIRD AVENUE
NEW YORK, NEW YORK 10022
TELEPHONE: (212) 752-3440
TELEX: 127043

EMPRESA SIDERURGICA DEL PERU,
"SIDERPERU"
AV. SANTIAGO ANTUNEZ DE MAYOLA
S/N
CHIMBOTE, PERU

DATE NOVEMBER 26, 1974
SHIPPED: FROM JACKSONVILLE
TO CHIMBOTE, PERU

OUR ORDER NO.
CUSTOMER ORDER NO. E-01688
VESSEL "M.V. PROMETHEE"

NSIGNED TO:
ORDER OF BANCO DE LA NACION, LIMA, PERU

MATERIAL	PRICE	AMOUNT
COMMERCIAL INVOICE	U.S. $ (per M.T.)	U.S. $
4,762 METRIC TONS CHATARRA DE ACERO P.A. 73.03.00.00	$118.50	$564,297.00
OCEAN FREIGHT	$ 38.00	$180,956.00
TOTAL C&F CHIMBOTE F.O.		$745,253.00

CONSULADO GENERAL DEL PERU MIAMI

COPIA CERTIFICADA

SIDERPERU O/C E-01688 REQ PMAT 21015

BANKERS TRUST COMPANY LETTER OF CREDIT NO.
R-68331

CONSULADO GENERAL DEL PERU
No. de Tarifas
Timbres en el original
Derechos US$ 2.=
No. de Orden 7121

STEELMET EXPORT COMPANY

BY: Joseph Makas

MIAMI, DEC 3 1974

POR ESTA ACTUACION NO SE HAN PERCIBIDO DERECHOS SUPLEMENTARIOS

GUILLERMO DYER
VICE-CONSUL

THE ABOVE COMMODITIES LICENSED BY U.S. GOVERNMENT FOR ULTIMATE DESTINATION PERU. DIVERSION CONTRARY TO U.S. LAWS PROHIBITED.

G. Dyer

Paid to Steelmet Export Co. Amount on 12/12/74

Defendants' Exhibit A.

Purchase Order Dated September 12, 1974
(with English translation).

(See opposite page.) ☞

SRES. FERRUNICH S. A.
Av. Bolivia # 580
LIMA (5)
Para: Steelment Exp
Steelment Incorpora

MARCA: SIDERPERU, O/C E-0

REQ. PMAT - 2

ITEM	CANT.	UNID.	COD
1	5,000	T.M.	

Luís Cáceres Grazian

Vo. Bo. GERENTE GE

SRES. FERRUNION S. A.
Av. Bolivia # 580
LIMA (5)
Para: Steelment Export Company
Steelment Incorporated.

MARCA: SIDERPERU, O/C E-01688

REQ. PMAT - 21015

EMPRESA SIDERURGICA DEL PERU
(Decreto Ley 19034)
AV. SANTIAGO ANTUNEZ DE MAYOLO S/N.
TELEF. 3141 - 2113 - CHIMBOTE

ORDEN DE COMPRA E-01688

Cotización: C-2610/74 del 29.8.74.

FECHA: 12 9 74 | AL PROVEEDOR
REQ PMAT-21015 (16.8.74)
PARTIDA: E-50114
CODIGO PROVEEDOR 38563-7
CODIGO COMPRA 1-614-3-01-56
LUGAR DE ENTREGA: Chimbote
FECHA DE ~~ENTREGA~~ EMBARQUE 3er.Trim. 1974
VIA: Aérea: ~~Marítima~~ Marítima: x

ITEM	CANT.	UNID.	CODIGO	DESCRIPCION Favor proveer material y/o servicio enumerado a continuación de acuerdo con todas las condiciones y cláusulas impresas al frente y al dorso de esta Orden de Compra.	PRECIO UNITARIO	PRECIO TOTAL
				CHATARRA DE ACERO		
1	5,000	T.M.		Aprox. de Chatarra de Acero fragmentada, según Norma norteamericana (SHREDDED) ± 5%		
				Precio C&F por T.M.	US.$ 158.00	790,000.00
						790,000.00
				Dcto. por T.M. US.$ 1.50		7,500.00
				TOTAL APROXIMADO C&F CHIMBOTE FREE OUT		US.$ 782,500.00
				NOTA: El precio consignado es a firme.		
				La condición C&F debe basarse en el estricto cumplimiento de los dispositivos legales vigentes que norman la Reserva de Carga para barcos de bandera peruana, según Decreto Supremo N° 016-69 TC del 30/12/69.		
				1. Esta obligación no podrá significar:		
				a. Atrasos en la fecha de embarque superior a 15 días.		

FACTURA - Sírvase presentar su Factura en Original y cinco Copias, adjuntando Guía de Remisión y el número de esta Orden

MARCA
Serán rechazados por nuestros Almacenes todos los Materiales cuyo embalaje no lleve la marca indicada en esta Orden

Toda correspondencia, factura y guía de remisión deben indicar el número de esta Orden de Compra

Luís Cáceres Graziani Cmdte.AP (r)
Vo. Bo. GERENTE GENERAL

César Molina Fernández (410)
P. Vo. Bo. GERENCIA DE MATERIALES

Ernesto González Velásquez (192)
JEFE DE COMPRAS GENERALES.

SIDERPERU
EMPRESA SIDERURGICA DEL PERU

AV. SANTIAGO ANTUNEZ DE MAYOLO s/n.
TELEFONOS: 3141 - 2113 - CHIMBOTE

CABLES:
SIDERPERU
TELEX: 3540270

CLAUSULAS QUE DEBEN OBSERVARSE

MARCA: La marca deberá ser estampada en todos los documentos como también en los bultos.
PACKING LIST: Es obligatorio que tan pronto la mercadería se despache, inmediatamente por vía aérea se remita dos ejemplares, del Packing Lista nuestra Oficina de Lima, para tener documento detallado para el control de la mercadería.
DESTINO: El puerto final convenido no puede ser cambiado de ninguna manera, salvo autorización escrita del comprador.
TRANSBORDO: Está prohibido, pues el viaje debe ser directamente de puerto de origen a puerto de destino en una misma nave.
EXPEDICION: En puerto durante el mes que se ha señalado como fecha de embarque, salvo caso de autorización expresa.
DOCUMENTACION: En el sello puesto al pió de la Orden de Compra se indica que son necesarios los siguientes documentos:

8 Facturas Comerciales
6 Conocimientos de Embarque
4 Facturas Consulares
3 Packing List.

FACTURACION: Las facturas comerciales deben extenderse por importe FOB puerto de embarque. Los gastos para poner la mercadería de FOB a puerto de destino deben agregarse en Factura complementaria, global o detallada.

EXONERACION FACTURA CONSULAR:

Cabe tener pte. que sólo los pedidos menores de US $. 50.00 FOB, no requieren Factura Consular, de acuerdo a las normas establecidas.

Reserva de Carga: Decreto Supremo No. 016 - 69 - TC del 30—12—69

1.- En caso de que naves de bandera peruana presten servicios en forma regular al puerto de embarque, la mercadería deberá transportarse obligatoriamente en éstas.

1.1.- Esta obligación no podrá significar:

a) Atrasos en la fecha de embarque, superiores a 15 días.
b) Cobro de fletes superiores a los establecidos en la Conferencia Naviera o del mercado de fletes, según el caso
c) El empleo de naves de características inadecuadas para la carga.
d) Discriminacion por el tipo de carga.
e) Empleo de naves que no tengan la más alta clasificación compatible con el tráfico a que están destinadas.

2.- Si esta disposición no pudiera cumplirse, se entregará obligatoriamente junto con los documentos de embarque, constancia del Consulado Peruano en el puerto de embarque que acredite cualesquiera de las circunstancias previstas en el punto 1.1.

Vo. Bo. GERENTE GENERAL — Vo. Bo. — JEFE DE COMPRAS

A4 - DC - RCE

SIDERPERU
Empresa Siderúrgica del Perú

Av. Santiago Antunez de Mayolo s/n.
Teléfonos 3141 - 2113 — Chimbote

HOJA No. DOS
ORDEN DE COMPRA No. E-01688

ITEM	CANT.	UNID.	CODIGO	DESCRIPCION	PRECIO UNITARIO	PRECIO TOTAL
				b. Cobro de fletes superiores a los establecidos en la Conferencia Naviera del Mercado de Fletes, según el caso.		
				c. El empleo de naves de características inadecuadas para la carga.		
				d. Descriminación por el tipo de carga.		
				e. Empleo de naves que no tengan la más alta clasificación compatible con el tráfico a que están destinadas.		
				2. Si esta disposición no pudiera cumplirse, se entregará obligatoriamente junto con los documentos de embarque, Constancia del Consulado Peruano o Cámara de Comercio en el Puerto de embarque, que acredite cualquiera de las circunstancias previstas en el punto uno (1).		
				PLAZO DE ENTREGA: Tercer trimestre de 1974.		
				EMBARQUE: Inmediato después de recibida la Carta de Crédito.		
				Las fechas acordadas del suministro de este material deberán ser cumplidas estrictamente, caso contrario		

Luís Cáceres Graziani Cmdte. AP(r)
V° B° GERENTE GENERAL

César Molina Fernández (410)
P. GERENCIA DE MATERIALES

Ernesto González Velásquez (192)
JEFE DE DPTO. COMPRAS GENERALES

SIDERPERU
Empresa Siderúrgica del Perú

Av. Santiago Antunez de Mayolo s/n.
Teléfonos 3141 - 2113 — Chimbote

HOJA No. TRES

ORDEN DE COMPRA No. E-01688

ITEM	CANT.	UNID.	CODIGO	DESCRIPCION	PRECIO UNITARIO	PRECIO TOTAL
				el valor pactado sobre esta mercadería, no deberá sufrir variaciones por ningún motivo.		
				PAGO: Carta de Crédito irrevocable y confirmada a favor de Steelment Export Company - Steelment Incorporated, 919 3th. Avenue, New York, U.S.A., pagadera contra entrega de documentos de embarque a través del Chase Manhattan Bank New York.		
				MODIFICACION DE CARTA DE CREDITO: El costo que representase la modificación de la Carta de Crédito por prórroga de su vigencia o cualquier otra modificación ocasionada por el proveedor, será debitado a su cuenta.		
				TOLERANCIA DE ENTREGA: ± 5%		
				SEGURO: Por cuenta de SIDERPERU.		
				DESCARGA: 800 T.M. mínimo por día. Demás condiciones de acuerdo al Charter Party.		
				PUERTO DE DESTINO: Chimbote - Perú.		
				PAIS DE ORIGEN: Estados Unidos.		
				PUERTO DE EMBARQUE: Jacksonwille, Port Everglades		

Luís Cáceres Graziani Cmdte.AP(r)
V° B° GERENTE GENERAL

César Molina Fernández (410)
P. GERENCIA DE MATERIALES

Ernesto González Velásquez (192)
JEFE DEL DPTO. COMPRAS GENERALES

SIDERPERU
Empresa Siderúrgica del Perú

Av. Santiago Antunez de Mayolo s/n.
Teléfonos 3141 - 2113 — Chimbote

HOJA No CUATRO
ORDEN DE COMPRA No. E-01688

ITEM	CANT.	UNID.	CODIGO	DESCRIPCION	PRECIO UNITARIO	PRECIO TOTAL
				y/o Providence, a opción del Proveedor.		
				MARCA: SIDERPERU, O/C E-01688, Req. PMAT-21015.		
				DECLARACION CONSULAR: Cintarra de Acero de Fundición		
				P.A.: 73.03 - 00.00		
				INSPECCION: Será efectuada en el lugar de embarque por un funcionario de Siderperú. Los gastos ocasionados serán a cargo del Proveedor.		
				DOCUMENTOS DE EMBARQUE: Tan pronto se despache la mercadería, rogamos nos remitan en forma inmediata copias de los siguientes documentos:		
				- Factura Comercial (4)		
				- Conocimiento de Embarque: de Charter Party (4)		
				- Certificado de Calidad y Peso (4)		
				AVISO DE EMBARQUE: Acompañamos 5 formularios de Aviso de embarque para que sean llenados los datos requeridos y enviados en forma inmediata, antes de que se efectúe el embarque de la mercadería a:		
				A) 1 Formulario al Banco de la Nación, Dpto. de Seguros, Apartado # 1835, Lima.		
				B) 3 Formularios a Siderperú, Dpto. de Seguros, Apar		

Luis Cáceres Graziani Cmdte.AP(r)

César Molina Fernández (410)

Ernesto González Velásquez (192)

SIDERPERU
Empresa Siderúrgica del Perú

Av. Santiago Antunez de Mayolo s/n.
Teléfonos 3141 - 2113 — Chimbote

HOJA No. CINCO
ORDEN DE COMPRA No. E-01688

ITEM	CANT.	UNID.	CODIGO	DESCRIPCION	PRECIO UNITARIO	PRECIO TOTAL
				tado 166, Chimbote.		
				Cumplimos con recordarles que de acuerdo a la Resolución Directoral N° 499/H del Ministerio de Hacienda, es obligatorio que todas las guías y manifiestos sean redactados en idioma castellano o en su defecto que tengan la traducción en el mismo documento o en la Factura Comercial.		
				FACTURACION: En la Factura Comercial deberá considerarse el valor FOB separadamente de los gastos de flete.		
				* * * * * * * * * *		
				AMS/mac.		

Luis Cáceres Graziani Cmdte. AP(r)
V° B° GERENTE GENERAL

César Molina Fernández (410)
P. GERENCIA DE MATERIALES

Ernesto González Velásquez (192)
JEFE DEL DPTO. COMPRAS GENERALES

SIDERPERU
EMPRESA SIDERURGICA DEL PERU

AV. SANTIAGO ANTUNEZ DE MAYOLO s/n
TELEFONOS: 3141 - 2113 - CHIMBOTE

CABLES:
SIDERPERU
TELEX 3540270

CONDICIONES DE COMPRA

1.- ACEPTACION

La aceptación de esta orden constituye la aprobación de todas las condiciones estipuladas en la misma
En caso de disconformidad, el proveedor deberá devolver la presente orden dentro de los quince días posteriores a la fecha de expedición de la presente. Si la orden no fuera devuelta dentro de este plazo, se considerará como aceptada.

2.- PRECIOS

Los precios estipulados en esta orden están de acuerdo con su cotización y no deben ser modificados, sin previa autorización del comprador por escrito.

3.- EMBALAJE

Sírvanse entregar el material bien embalado y marcado acompañado de dos notas de contenido detalladas, una en el paquete, cajón bulto, y la otra por separado. Los materiales que no tengan el embalaje apropiado para su transporte, no serán aceptados por nosotros. El embalaje correrá por cuenta del proveedor salvo convenio al contrario estipulado en esta orden.

4.- CALIDAD

Nos reservamos el derecho de rechazar todos los materiales o mercaderías que no estén en conformidad con lo estipulado en la presente orden sin derecho de parte del proveedor a reclamo alguno, corriendo con todos los gastos de transporte por cuenta del mismo.

5.- CANTIDAD

Las cantidades indicadas en esta orden no deben ser alteradas sin nuestra autorización por escrito.

6.- ENTREGAS

Siendo el tiempo una de las condiciones fundamentales de esta orden, nos reservamos el derecho de cancelar total o parcialmente la misma, en caso de que las entregas no sean hechas en el tiempo y forma especificados.

7.- GARANTIA

Al aceptar esta orden el vendedor garantiza que los artículos que ampara se ajustan a las normas oficiales de calidad indicadas en esta

8.- DESTINO

El puerto final convenido no puede ser cambiado de ninguna manera, salvo autorización escrita del comprador

9.- TRANSBORDO

El viaje debe ser de puerto de origen a puerto de destino en una misma nave, en consecuencia está estrictamente prohibido el transbordo.

Vo. Bo. GERENTE GENERAL

Vo. Bo.

JEFE DE COMPRAS

7/92.

..DC-CC

TRANSLATION from Spanish
REF. # 9-113/mr

PLF. ~~DEFT.~~ R/S
WIT. Gv. Del 3/96

To: Ferrunión S.A.
Av. Bolivia #580
Lima (5)
For: Steelment Export Company
Steelment Incorporated

MARK: SIDERPERU, O/C E-01688

REQ. PMAT - 21015

SIDERPERU
Empresa Siderúrgica del Perú
Av. Santiago Antunez de Mayolo s/n
Chimbote

PURCHASE ORDER E-01688

Quotation: C-2610/74 of 8/29/74

Date: 9/12/74 To Supplie
Req.: PMAT-21015 (8/16/
Consignment: E-50114
Supplier's Code: 38563-
Purchase Code:
1-614-3-01-56
Place of Delivery:
Chimbote
Date of Shipment:
3rd Quarter 1974
By sea

ITEM	QUANTITY	UNIT	CODE	DESCRIPTION	PRICE UNIT	PRICE TOTAL
1	5,000	Metric Tons		Approx. of shredded steel scrap, according to U.S. Standard, ± 5%		
				Price C&F per metric ton	US$ 158.00	790,000.00
						790,000.00
				Discount per metric ton US$ 1.50 ...		7,500.00
				APPROXIMATE TOTAL C&F CHIMBOTE FREE OUT		US$ 782.500.00

NOTE: The price set forth is firm.

The C&F condition must be based on strict compliance with the legal provisions in force that govern the reservation of cargo for Peruvian flag ships, according to Supreme Decree No. 016-69 TC of 12/30/69.

1. This obligation may not entail:

a) Delays in date of shipment in excess of 15 days.

BERTRAND LANGUAGES INC.
369 Lexington Ave., New York, N. Y. 10017
Suite 503
(212) 867-2370

b) Collection of freight rates in excess of those established by the Freight Market Shipping Conference, as the case may be.

c) The use of ships with characteristics unsuitable for the cargo.

d) Discrimination in type of cargo.

e) Use of ships that do not have the highest classification compatible with the traffic for which they are intended.

2. If this provision cannot be met, an affidavit of the Peruvian Consulate or Chamber of Commerce at the port of loading, proving any of the circumstances provided for in item one (1), must necessarily be delivered with the shipping documents.

TERM OF DELIVERY: Third quarter of 1974. 30 /Oct. 25

SHIPMENT: Immediately after receipt of letter of credit.

The dates stipulated for supply of this material shall be strictly observed; otherwise the amount agreed to on this merchandise shall undergo no changes on any account.

PAYMENT: Irrevocable and confirmed letter of credit in favor of Steelmert Export Company - ~~Steelment Incorporated~~, 919 Third Avenue, New York, N.Y., U.S.A., payable on delivery of shipping documents through the Chase Manhattan Bank of New York.

REVISION OF LETTER OF CREDIT: The cost represented by revision of the letter of credit, for extension of its life or for any other change brought about by the supplier shall be charged to his account.

DELIVERY TOLERANCE: ± 5%.

INSURANCE: On account of SIDERPERU.

UNLOADING: ~~200~~ 800 metric tons minimum per day. Other conditions in accordance with Charter Party.

PORT OF DESTINATION: Chimbote, Peru.

COUNTRY OF ORIGIN: United States.

PORT OF LOADING: Jacksonville, Port Everglades and/or Providence, at Supplier's option.

MARK: SIDERPERU, O/C E-01688, Req. PMAT-21015.

CONSULAR DECLARATION: Cast Steel Scrap

P.A.: 73.03 - 00.00

INSPECTION: To be made at place of loading by a Siderperú officer. The expenses incurred shall be chargeable to the Supplier.

SHIPPING DOCUMENTS: As soon as the merchandise is shipped, please send us immediately copies of the following documents:

- Commercial Invoice (4)
- ~~Bill of Lading: Charter~~ Party (4) 3 originals C/P [illegible]
- Certificate of Quality and Weight (4)

SHIPPING NOTICE: We are enclosing five Shipping Notice forms to be filled out with the information requested and sent immediately, before the merchandise is shipped, as follows:

A) 1 Form to the Banco de la Nación, Insurance Department, Apartado #1835, Lima.

B) 3 Forms to Siderperú, Insurance Department, Apartado 166, Chimbote.

We wish to remind you that, according to Administrative Resolution No. 499/H of the Treasury Ministry, it is mandatory for all bills and manifests to be drawn up in Spanish or else have the translation on the same document or on the commercial invoice.

BILLING: On the commercial invoice the value FOB must be considered separate from freight charges.

Luis Cáceres Graziani, Commander, Peruvian Navy (Ret.)
Approved: General Manager

César Molina Fernández (410)
Materials Department

Ernesto González Velásquez (192)
Chief of General Purchasing Department

PURCHASING CONDITIONS

1. ACCEPTANCE

Acceptance of this order constitutes approval of all the conditions stipulated in same. In case of disapproval, the supplier shall return this order within fifteen days after date of issuance hereof. If the order should not be returned within this term, it shall be deemed as accepted.

2. PRICES

The prices stipulated in this order are in accordance with your quotation and are not be changed, without the prior authorization of the buyer in writing.

3. PACKING

Please deliver the material well packed and marked, accompanied by two itemized lists of contents, one in the package, box or bundle and the other under separate cover. Materials not properly packed for transportation will not be accepted by us. Packing shall be chargeable to the supplier, unless otherwise stipulated in this order.

4. QUALITY

We reserve the right to reject all materials or goods that do not conform to the stipulations of this order without the supplier being entitled to any claim, defraying all costs of transportation on account of same.

5. QUANTITY

The quantities indicated in this order are not to be altered without our authorization in writing.

6. DELIVERIES

Time being one of the fundamental conditions of this order, we reserve the right to cancel same in whole or in part, in case the deliveries should not be made in the time and manner specified.

7. GUARANTEE

In accepting this order, the seller guarantees that the articles it covers conform to official quality standards indicated in this ...

8. DESTINATION

The final port agreed upon can absolutely not be changed, without the buyer's written authorization.

9. TRANS-SHIPMENT

The voyage must be from port of origin to port of destination on the same ship; consequently, trans-shipment is strictly forbidden.

Approved: Signature - General Manager

Approved: Signature

Approved: Signature - Purchasing Manager

CLAUSES TO BE OBSERVED

MARK: The mark shall be stamped on all documents as well as on parcels.

PACKING LIST: As soon as the merchandise is shipped, it is obligatory to send immediately by air mail two copies of the packing list to our Lima office, in order to have a detailed record for control of the merchandise.

DESTINATION: The final port absolutely cannot be changed, without the buyer's written authorization.

TRANS-SHIPMENT: It is prohibited, for the voyage has to be direct from port of origin to port of destination on the same ship.

SHIPMENT: In port during the month indicated as date of loading, unless otherwise expressly authorized.

DOCUMENTS: On the seal affixed at the bottom of the purchase order it is indicated that the following documents are necessary:

8 Commercial invoices

6 Bills of lading

4 Consular invoices

3 Packing lists

BILLING: Commercial invoices are to be issued for an amount FOB port of loading. Expenses incurred in delivering the goods from FOB to port of destination are to be added in a supplementary, comprehensive or itemized invoice.

CONSULAR INVOICE EXEMPTION:

It is to be borne in mind that only orders for less than US$ 50.00 FOB do not require consular invoice, according to the rules established.

Reservation of Cargo: Supreme Decree No. 016 - 69 - TC of 12/30/69

1. In case Peruvian flag ships render regular service to the port of loading, the goods must necessarily be carried on them.

   1.1. This obligation may not entail:

   a) Delays in date of shipment in excess of 15 days.

   b) Collection of freight rates in excess of those established by the Shipping Conference or freight market, as the case may be.

   c) The use of ships with characteristics unsuitable for the cargo.

   d) Discrimination in type of cargo.

   e) Use of ships that do not have the highest classification compatible with the traffic for which they are intended.

2. If this provision cannot be met, an affidavit of the Peruvian Consulate at the port of loading, proving any of the circumstances provided for in Item 1.1, must necessarily be delivered with the shipping documents.

Approved: Signature - General Manager

Approved: Signature

Approved: Signature - Purchasing Manager

Defendants' Exhibit B.

Letter of Credit Dated October 9, 1974.

(See opposite page.) ☞

CABLE ADDRESSES
NEW YORK · BANKTRUST
LONDON · BANTRUSCOM

BANKERS TRUST COMPANY
16 WALL STREET · NEW YORK, N. Y., 10005

LONDON
8, QUEEN VICTORIA STREET

OCTOBER 9, 1974

Correspondent's No.	CD-12867
Letter—Cable of	10/8/74
Our Number	R-69331

CONFIRMED

ADVICE OF
IRREVOCABLE STRAIGHT CREDIT

MAIL TO
STEELMENT EXPORT COMPANY
STEELMENT INCORPORATED
919 3RD AVENUE,
NEW YORK, NEW YORK

Gentlemen:

We are instructed by BANCO DE LA NACION, LIMA, PERU

to inform you that they have opened their irrevocable credit in your favor for account of AND BY ORDER OF EMPRESA SIDERURGICA DEL PERU "SIDERPERU"
for a sum or sums in U. S. dollars not exceeding a total of SEVEN HUNDRED EIGHTY TWO THOUSAND FIVE HUNDRED AND 00/100 **$782,500.--**
available by your drafts on us, at SIGHT.
to be accompanied by:

- COMMERCIAL INVOICE IN 9 COPIES COVERING CHATARRA DE ACERO P.A. 73.03.00.00 C. AND F. CHIMBOTE F.O.
- CONSULAR INVOICE AND 4 COPIES ORIGINAL VISAED BY THE PERUVIAN CONSULATE NOT LATER THAN SHIPMENT DATE.
- WEIGHT CERTIFICATE AND 4 COPIES.
- QUALITY CERTIFICATE AND 4 COPIES.
- COMPLETE SET OF CLEAN ON BOARD OCEAN BILLS OF LADING DRAWN TO ORDER OF BANCO DE LA NACION, LIMA, PERU MARKED FREIGHT PREPAID.

SHIPMENT TO BE MADE ON VESSELS OF PERUVIAN FLAG OR CONFERENCE VESSELS, FROM JACKSONVILLE, PORT EVERGLADES AND OR PROVIDENCE TO: CHIMBOTE.

PARTIAL SHIPMENTS NOT PERMITTED.

DOCUMENTS MUST EVIDENCE PACKAGING MARKED: SIDERPERU O/C E-01688 REQ PMAT-21015.

All drafts so drawn must be marked "Drawn under Bankers Trust Company Advice No. R-69331"
This credit is subject to the Uniform Customs and Practice for Documentary Credits (1962 Revision), International Chamber of Commerce Brochure No. 222.

The above mentioned correspondent engages with you that all drafts drawn under and in compliance with the terms of this advice will be duly honored on delivery of documents as specified, if duly presented at this office on or before JANUARY 2, 1975.

E CONFIRM THE CREDIT AND THEREBY UNDERTAKE THAT ALL DRAFTS DRAWN AND PRESENTED A OVE SPECIFIED WI L BE DULY HONORED BY US.

Very truly yours,

FOR BTCO

GL 2167

Defendants' Exhibit C.

Amendment to Letter of Credit, Dated October 31, 1974.

(See opposite page.) ☞

CABLE ADDRESS
NEW YORK - BANKTRUST
LONDON - BANTRUSCOM

ANKERS TRUST COMPA
WALL STREET • NEW YORK, N. Y. 10015

LONDON E. C. 4
QUEEN VICTORIA STREET

OCTOBER 31, 1974

[X] THIS CONFIRMS OUR MESSAGE OF TODAY BY [ ] CABLE [ ] WIRE [X] TELEPHONE

[ ] Forwarded through [ ] Copy sent to

STEELMET EXPORT COMPANY
STEELMEQT INCORPORATED
919 3RD AVENUE,
NEW YORK, NEW YORK
ATTN: MR. J. MAKAS

AT EQUEST OF

BANCO DE LA NACION
LIMA,
PERU

Our No. R-69331

Their No. CD-12867
Their Customer EMPRESA SIDERURGICA DEL PERU "SIDERPERU"

Gentlemen:

The credit/advice has been amended as follows on instructions received by CABLE of 10/28/74

BENEFICIARY'S NAME SHOULD READ STEELMET EXPORT COMPANY.

COMPLETE SET OF CLEAN ON BOARD CHARTER PARTY BILLS OF LADING NOW REQUIRED IN LIEU OF COMPLETE SET OF CLEAN ON BOARD OCEAN BILLS OF LADING.

DRAFT WEIGHT AND QUALITY CERTIFICATE IN 4 COPIES NOW REQUIRED INSTEAD OF WEIGHT AND QUALITY CERTIFICATE.

WHERE IT READS ON VESSELS OF PERUVIAN FLAG OR CONFERENCE VESSELS NOW DELETED.

All other terms and conditions as previously advised remain unchanged.

Immediate notification must be given to us if this amendment is not accepted.

Very truly yours,

PER PRO.

GL:HP

Defendants' Exhibit D.

Two Business Cards.

(See opposite page.) ☞

SIDERPERU

EMPRESA SIDERURGICA DEL PERU

CESAR MOLINA FERNANDEZ
SUPERINTENDENTE DE ABASTECIMIENTOS

Av. Antúnez de Mayolo s/n
Teléfono 3141
Anexo 399
Chimbote

Av. Tacna 543 - Piso 11
Teléfono 283450
L I M A
TELEX : 3540270

SIDERPERU

EMPRESA SIDERURGICA DEL PERU

JAVIER A. ZEGARRA ZAVALETA
JEFE CONTROL DE INVETARIOS
DPTO. PROGRAMACION Y CONTROL DE MATERIALES

Av. Antúnez de Mayolo s/n.
Teléfono 3141
Anexo 488
Chimbote

Av. Tacna 543 - Piso 11
Teléfono 283450
L I M A
TELEX : 3540270

Defendants' Exhibit E.

Estimated Net Profit of Chicago/Avonmouth Voyage Offer.

(See opposite page.) ☞

OFFER NOT PURSUED NOVEMBER 20, 1974

9,000 M/T 5% MOLOO PIOT	
1 S. B.:	Chicago
1 S. B.:	Avonmouth (U.K.)
Freight:	‡ 14.00 Per M/T
Loading:	2.5 WWD SHEX Load.
Discharging:	4,000 WWD SHEX Disch.
Dem/Desp:	‡ 3100.00

Est. Expenses

a)	Sailing Detroit:	0730	11/23/74
	Est. Arrival Chicago:	1930	11/25/74
	2.5 Days		
b)	At Chicago Loading Time:	1930	11/25/74
	To	1930	11/28/74
	3 Days in Port		
c)	Sailing from Chicago:	1930	11/28/74
	Arriving Montreal	1930	12/3/74
	5 Days		
d)	Sailing from Montreal (Taking Bunkers)	0600	12/4/74
	Arriving Avonmouth	1800	12/12/74
	8.5 Days		
e)	Discharging Avonmouth	1800	12/15/74
	3 Days		

Charter Hire

22 Days Charter Hire at U.S.	$4850	$ 106,700
Less 1 1/4% Commission		(1,333)
Net Hire Payable to Owners		$ 105,367

Bunker Consumption

a, c, d 16 Days		
IFO 16 x 22 x 80	$ 28,160	
MDO 22 x 1.5 x 120	3,960	32,120

Port Expenses

Chicago	$ 3,500	
St. Lawrence/Montreal/ Great Lakes	6,000	
Avonmouth	7,000	16,500
Insurance: IWL		7,000
Sundries: Gratuities, Hold Cleaning, Etc.		3,000
		$163,987

Revenue

9450 M/T at ‡ 14.00 Per M/T	
‡ 132,300.00 at about 2.40 being the rate of exchange Nov./Dec. 1974 equivalent to:	$317,520
Less 5% Commissions	15,876
Net Revenue	$301,644
Estimated Profit	$137,657

Defendants' Exhibit F.

Estimated Net Loss of M/V Mary on Jacksonville/Chimbote Voyage.

(See opposite page.) ☞

M. V. "MARY"

Based on Genjap Gencon subdetails which we never negotiated or agreed as fixture did not go through. The owner's vessel should have performed as follows taking into account the alledged ETA at Jacksonville, November 28, 1974.

Genjap Terms

Fair Weather Working Day

A. Loading rate at 2500 LT per WWD. Discharging rate at 800 LT per WWD. Sundays and holidays excluded, even if used, and from Saturday noon to Monday 0800 hours and from midnight preceding a holiday until 0800 hours the day after a holiday not to count even if used.

B. Time to count at both ports from 0800 hours the next working day after Notive of Readiness is rendered during office hours.

C. Extra cargo insurance due to vessel's age to be for owner account.

1. At loading, the vessel could have stayed in port until laytime expiration as follows:

   9375 LT at 2500 LT per WWD = 3 days 18 hours 00 minutes
   Arriving on Thanksgiving Day (holiday)
   Could tender November 29, 1974 - 0900 hours
   Time could count Saturday 0800, November 30, 1974

Thursday	Nov. 28, 1974	Not Counting	00-00-00
Friday	Nov. 29, 1974	Not Counting	00-00-00
Saturday	Nov. 30, 1974	0800 - 1200	00-04-00
Sunday	Dec. 1, 1974	Not Counting	00-00-00
Monday	Dec. 2, 1974	0800 - 2400	00-16-00
Tuesday	Dec. 3, 1974	0000 - 2400	01-00-00
Wednesday	Dec. 4, 1974	0000 - 2400	01-00-00
Thursday	Dec. 5, 1974	0000 - 2200	00-22-00
	Laytime Expiring		03-18-00

   At loading from noon November 28, 1974 (arrival time) to laytime expiring 2200 hours December 5, 1974.

   Time used at loading: 7 days 10 hours 00 minutes.

2. At discharge, the vessel could have stayed in port until laytime expiration as follows:

   9375 LT at 800 LT per WWD = 11 days 17 hours 14 minutes
   ETA Chimbote as per vessel's speed and owner's calculation 0900 hours Tuesday, December 17 - Tendering NOR Tuesday. Time counting from Wednesday 0800 hours, December 18.

Tuesday	Dec. 17, 1974	Not Counting	00-00-00
Wednesday	Dec. 18, 1974	0800 - 2400	00-16-00
Thursday	Dec. 19, 1974	0000 - 2400	01-00-00
Friday	Dec. 20, 1974	0000 - 2400	01-00-00
Saturday	Dec. 21, 1974	0000 - 1200	00-12-00
Sunday	Dec. 22, 1974	Excepted	00-00-00
Monday	Dec. 23, 1974	0800 - 2400	00-16-00
Tuesday	Dec. 24, 1974	0000 - 1200	00-12-00
Wednesay	Dec. 25, 1974	Christmas Holiday	00-00-00
Thursday	Dec. 26, 1974	0800 - 2400	00-16-00

2. Continued

Friday	Dec. 27, 1974	0000 - 2400	01-00-00
Saturday	Dec. 28, 1974	0000 - 1200	00-12-00
Sunday	Dec. 29, 1974	Excepted	00-00-00
Monday	Dec. 30, 1974	0800 - 2400	00-16-00
Tuesday	Dec. 31, 1974	0000 - 2400	01-00-00
Wednesday	Jan . 1, 1975	Holiday	00-00-00
Thursday	Jan . 2, 1975	0800 - 2400	00-16-00
Friday	Jan . 3, 1975	0000 - 2400	01-00-00
Saturday	Jan . 4, 1975	0000 - 1200	00-12-00
Sunday	Jan . 5, 1975	Excepted	00-00-00
Monday	Jan . 6, 1975	0800 - 2400	00-16-00
Tuesday	Jan . 7, 1975	0000 - 1714	00-17-14
	Laytime Expiring		11-17-14

At discharging from 0900 hours, December 17, 1974 (arrival time) to laytime expiring Tuesday, January 7, 1975 - 1714 hours
Time used at discharge: 21 days 8 hours 14 minutes.

3. Time used for the voyage.

St. Croix/Jacksonville 1194 miles based on vessel's speed in perfect weather	4-12-00
Loading as per above	7-10-00
Jacksonville/Cristobal 1516 miles based on vessel's speed in perfect weather	5-18-00
In canal	1-00-00
Balboa/Chimbote 1163 miles based on vessel's speed in perfect weather	4-12-00
Discharging in Chimbote	21- 8-00
	44-12-00

4. Hire: 44.5 days at $4200.00 — $ 186,900.00

Fuel:	14.75 days x 19 (sea)	=	280.25	
	29.75 days x 7 (port)	=	208.25	
	IFO		488.50 x $ 75	36,637.00
	44.5 days x ½	=	22¼ x 110	2,447.00

Port Charges:	Jacksonville	$ 6500	
	Canal	6500	
	Chimbote	3400	16,400.00
	Total expenses until complete discharge at Chimbote		242,384.00

90% of vessels calling West Coast S. America find no employment for the return voyage, in which case, M. V. Mary could have returned in Ballast back to the Gulf. (M. V. Promethee did not find employment after completion of discharge at Chimbote and returned back to the East Coast in Ballast.)

5. Return in Ballast expenses to a Gulf port (N. Orleans)

Chimbote/Balboa	4-12-00
In Canal	1-00-00
Cristobal/N. Orleans	5-06-00
	10-18-00

Hire:	10 3/4 days x 4200		$ 45,150.00
Fuel:	9 3/4 x 19 (sea)	185.25	
	1 x 7 (port)	7.00	
		192.25 IFO at $75	14,418.00
	1 x ½ MDO =	0.5 MDO at $110	55.00
Canal Dues			3,400.00
Total return expenses			$ 63,023.00

6. Penalty on cargo insurance due to vessel's age:

Cargo value: $1,490,506 at $0.375 per $100 = $ 5,589.00

Total expenses under item 4	$ 242,384.00
Total expenses under item 5	63,023.00
Extra insurance due to vessel's age under item 6	5,589.00
The voyage could have cost owners	$ 310,996.00

If fixture could have gone through, owner could have earned:

9375 LT x $29.25	274,218.75
Less 3 3/4% commission	10,283.20
Net Freight Revenue	263,935.55
Net Loss for Owners	47,060.45

375—Affidavit of Service

The Reporter Co., Inc., 11 Park Place, New York, N. Y. 10007

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

ATLANTIC & GREAT LAKES STEAMSHIP CORP.
Plaintiff-Appellee,

against
Steelmet Inc., defendant
against
Tidewater Terminals, Inc.,
Defendant-Appellant

AFFIDAVIT OF SERVICE

STATE OF NEW YORK,
COUNTY OF New York, ss:

Kenneth Riccardi being duly sworn, deposes and says that he is over the age of 21 years and resides at 28 21 West 12th Street, Brooklyn, N.Y.

That on the 16th day of May 1977 at 161 William Street, New York, N.Y. he served the annexed Appendix and Brief for Appellant upon Donovan, Donovan Walsh & Maloof in this action, by delivering to and leaving with said Donovan, Donovan, Walsh & Maloof 2 true copies appendix ~~xxxxxxx~~ thereof.
2 true copies Brief

DEPONENT FURTHER SAYS, that he knew the persons so served as aforesaid to be the person mentioned and described in the said papers

Deponent is not a party to the action.

Sworn to before me, this ~~16th~~ day of May 1977

Kenneth F. Riccardi

Roland W. Johnson

ROLAND W. JOHNSON
Notary Public, State of New York
No. 4509705
Qualified in Delaware County
Commission Expires March 30, 1979